

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 482

CHICAGO, SAINT PAUL, MINNEAPOLIS & OMAHA
RAILWAY COMPANY, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE
COMMERCE COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF MINNESOTA

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1
[fol. 1]

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MINNESOTA, FOURTH
DIVISION**

**CHICAGO, SAINT PAUL, MINNEAPOLIS AND OMAHA RAILWAY
COMPANY, a Wisconsin Corporation; Great Northern Rail-
way Company, a Minnesota Corporation; Charles M.
Thomson, as Trustee of the Property of Chicago & North
Western Railway Company; Henry A. Scandrett, Walter
J. Cummings and George I. Haight, as Trustees of the
Property of the Chicago, Milwaukee, St. Paul & Pacific
Railroad Company; and L. C. Sprague, Receiver of Min-
neapolis & St. Louis Railroad Company; Plaintiffs,**

vs.

**UNITED STATES OF AMERICA; INTERSTATE COMMERCE COMMIS-
SION; and Cornelius W. Styer, Doing Business as North-
ern Transportation Company, Defendants.**

COMPLAINT—Filed October 30, 1942

For their Complaint, plaintiffs state:

1

The plaintiffs are common carriers of property by rail-
road, and are, as stated in the title of this action, corpora-
tions duly organized and existing, or trustees or receivers,
duly appointed and qualified, of railroad corporations.

2

The defendant, Cornelius W. Styer, is an individual doing
business under the firm name and style of Northern Trans-
portation Company. The place of business of said defend-
ant is at St. Paul, Minnesota, and his residence is in the
City of Minneapolis, Hennepin County, Minnesota.

[fol. 2]

3

This is a civil action, under Paragraph 28, Section 24,
Judicial Code; 28 U. S. C. 41 (28), to enjoin, annul, and set
aside an order of the Interstate Commerce Commission, as
hereinafter more fully appears. Said order was made on
the petition of said defendant Styer, whose place of resi-

dence is within the District of Minnesota, Fourth Division of this Court.

The defendant, Cornelius W. Styer, doing business as Northern Transportation Company, filed application with the Interstate Commerce Commission on February 12, 1936, under Docket No. MC-47644, for authority under the so-called "grandfather clause" of Section 206(a) of the Interstate Commerce Act, 49 U. S. C. 306 (a), to continue operation as a common carrier of property by motor vehicle in interstate commerce, said application being more fully described in Exhibit "A" hereto attached.

On July 9, 1938, said defendant Cornelius W. Styer, doing business as Northern Transportation Company, filed application with the Interstate Commerce Commission, under Docket No. MC-47644 (Sub. No. 1), for a certificate of public convenience and necessity as a common carrier of property by motor vehicle in interstate commerce, said application being more fully described in Exhibit "B" hereto attached.

The aforesaid applications were heard separately before different Joint Boards pursuant to the provisions of the Interstate Commerce Act; and the plaintiffs and others appeared as protestants at the hearings before said Joint Boards in opposition to the granting of said applications.

The report and recommended order of the Joint Board which heard the application described in paragraph 4, above, [fol. 3] was served on July 31, 1940. Said report recommended the granting of a part of the authority applied for and the denial of the remainder. A copy of said report and recommended order of said Joint Board, marked Exhibit "A", is attached hereto and made a part hereof. Exceptions to said report and recommended order were filed by defendant Styer and by the plaintiffs.

The report and recommended order of the Joint Board which heard the application described in paragraph 5,

above, was served on July 31, 1940. It recommended denial of the application in its entirety. A copy of said report and recommended order of said Joint Board, marked Exhibit "B", is attached hereto and made a part hereof. Defendant Styer filed exceptions to said report and recommended order.

9

The report and order of the Interstate Commerce Commission, Division 5, was filed on October 24, 1941. Copies of said report and order are hereto annexed, marked, respectively, Exhibits "C" and "D", and are made parts hereof. Said report and order cover both of said applications. Thereafter, and within due time, the plaintiffs filed a petition with the Interstate Commerce Commission asking for reconsideration of the said report and order by the entire Commission, and on April 6, 1942, the Commission denied said petition for reconsideration.

10

On July 11, 1942, pursuant to said report and order of the Commission, the Commission issued to the defendant, Styer, a certificate of public convenience and necessity, copy of which, marked Exhibit "E", is annexed hereto and made a part hereof.

[fol. 4]

11

Each of the plaintiffs is engaged in carrying, or participating in the carriage of, in interstate commerce, all of the commodities which the defendant Styer was authorized to transport by said report and order and said certificate of public convenience and necessity, from each point of origin to each point of destination which the defendant Styer was authorized to serve by said report and order and said certificate; and plaintiffs are prejudiced and injured by said report and order and said certificate and are interested parties with respect thereto.

12

With respect to the application described in Paragraph 4, above, for authority under the so-called "grandfather clause", the report and order of the Commission and the aforesaid certificate issued pursuant thereto, are erroneous,

4
contrary to law, in excess of the authority of the Commission, and unsupported by evidence, in so far as the Commission therein:

(a) Authorized the defendant Styer to serve any point or place within the State of Minnesota, except St. Paul and Minneapolis;

(b) Authorized the defendant Styer to operate over any highways in Minnesota except the highways described as "Route 1" in the appendix to Exhibit "C" hereto attached, Exhibit "C" being the report of the Commission;

(c) Authorized the defendant Styer to serve any point or place in the State of South Dakota, other than those located on U. S. Highway No. 14 between the Minnesota-South Dakota State Line and Huron, South Dakota, and on South Dakota Highway No. 37 between and including Huron and Mitchell, South Dakota;

(d) Found that on and since June 1, 1935, the defendant Styer was in bona fide operation as a common carrier of property by motor vehicle and providing service over any [fol. 5] route or routes or within the territory described in said grandfather application other than Route 1 described in the appendix to Exhibit "C", the report and order of the Commission, and the specific points thereon located on U. S. Highway No. 14 between the Minnesota-South Dakota State Line and Huron, South Dakota, and on South Dakota Highway No. 37 between and including Huron and Mitchell, South Dakota.

13

With respect to the application described in Paragraph 5, above, for a certificate of public convenience and necessity, the report and order of the Commission, and the aforesaid certificate issued pursuant thereto, are erroneous, contrary to law, in excess of the authority of the Commission, and unsupported by the evidence, in the following respects:

(a) In authorizing defendant Styer to serve any point or place in the State of Minnesota;

(b) In authorizing defendant Styer to operate over any highways in the State of Minnesota;

(c) In authorizing defendant Styer to serve any point or place in the State of South Dakota;

(d) In authorizing defendant Styer to operate over any highways in the State of South Dakota.

Wherefore, plaintiffs pray:

(1) That a District Court of three judges be organized as provided in Title 28, U. S. C., Section 47, to hear this cause;

(2) For interlocutory and permanent injunction restraining the defendant, Cornelius W. Styer, from operating under the authority of said order and said certificate of the Interstate Commerce Commission;

(3) That the order and the certificate of the Interstate Commerce Commission be annulled and set aside to the extent of the error alleged in plaintiffs' petition;

(4) That plaintiffs have all other relief to which they may be entitled and that they may recover costs.

Warren Newcome, A. L. Janes, P. F. Gault, Carson L. Taylor, Richard Musenbrock, Amos M. Mathews,
Attorneys for Plaintiffs.

Address: Warren Newcome, 275 East 4th Street, St. Paul, Minnesota.

[fol. 35]

EXHIBIT "C" TO COMPLAINT

This report will not be printed in full in the permanent series of Motor Carrier Reports of the Commission.

Interstate Commerce Commission

No. MC-47466¹

C. W. Styer Common Carrier Application

Submitted December 28, 1940. Decided October 24, 1941

1. Applicant found entitled to continue operation as a common carrier by motor vehicle, of general commodities, with certain exceptions, between certain points in Minnesota and South Dakota, over specified routes, by reason

¹ This report also embraces No. MC-47644 (Sub-No. 1) C. W. Styer—Extension—Elk Point.

of having been engaged in such operation on June 1, 1935, and continuously since.

2. Public convenience and necessity found to require operation by applicant as a common carrier by motor vehicle, of general commodities, with certain exceptions, between certain points in Minnesota and South Dakota, over specified routes.

3. Issuance of a certificate approved upon compliance by applicant with certain conditions, and applications in all other respects denied.

Perry R. Moore, and Clyde W. Fiddes for applicant.

A. L. Murphy, A. L. James, G. M. Springer, O. L. Buckingham, B. F. Moffatt, Warren Newcome, William Wilson, and Richard Musenbrock for protestants in Nos. MC-47644 and 47644 (Sub-No. 1).

Herman Chapman and P. F. DeMars for protestants in No. MC-47644 (Sub-No. 1).

H. A. Archambo for intervener in Nos. MC-47644 and MC-47644 (Sub-No. 1).

Charles A. Liggett for intervener in No. MC-47644 (Sub-No. 1).

Report of the Commission

Division 5, Commissioners Lee, Rogers, and Patterson

By Division 5:

The two applications considered herein represent a single unified operation commenced prior to June 1, 1935 and enlarged in scope during the so-called interim period between June 1, and October 15, 1935. They were heard on the same dates and at the same places, but inasmuch as they were within the jurisdiction of different joint boards [fol. 36] they were heard on separate records and separate reports and recommended orders were issued by the respective joint boards. We shall consider the two applications in a single report.

Exceptions were filed to the order recommended by the joint board in No. MC-47644 by protestants and by applicant and protestants replied to applicant's exceptions. Exceptions were filed by applicant to the order recommended by the joint board in No. MC-47644 (Sub-No. 1)

and protestants replied thereto. Our conclusions differ to some extent from those recommended.

By application, No. MC-47644, filed February 12, 1936, as amended, under the "grandfather" clauses of sections 206 (a) and 209 (a) of the Interstate Commerce Act, C. W. Styer, of St. Paul, Minn., doing business as Northern Transportation Company, seeks a certificate of public convenience and necessity or a permit authorizing continuance of operation as a common carrier or as a contract carrier by motor vehicle, of general commodities, including household goods, in interstate or foreign commerce between St. Paul and Minneapolis, Minn., and the metropolitan areas thereof, on the one hand, and on the other, certain points in southeastern South Dakota, over regular routes hereafter more specifically described, serving all intermediate points, and off-route points in that part of South Dakota on and south of a line beginning at the Minnesota-South Dakota State line and extending along U. S. Highway 212 to Redfield, S. Dak., and on and east of a line beginning at Redfield and extending along U. S. Highway 281 to its junction with U. S. Highway 14, thence along U. S. Highway 14 to Highmore, S. Dak., thence along South Dakota Highway 47 to Chamberlain, S. Dak., thence along U. S. Highway 16 to its junction with U. S. Highway 281, and thence along U. S. Highway 281 to the South Dakota-Nebraska State line, except Wolsey, Canton, Beresford, Stevens, Alcester, Jefferson, Chamberlain, Pukwana, Kimball, White Lake, and Plankinton, S. Dak.; and over irregular routes, between points in that part of South Dakota described above on the one hand, and, on the other, Fargo and Wahpeton, N. Dak., and all points in Minnesota.

By another application, No. MC-47644 (Sub-No. 1), filed July 9, 1938, the same applicant seeks a certificate of public convenience and necessity authorizing continuance of certain operations instituted between June 1, 1935 and October 15, 1935, as a common carrier by motor vehicle, of general commodities, including household goods, in interstate or foreign commerce, between substantially the same points and territories covered by the "grandfather" application, over regular routes hereinafter more specifically described, serving all intermediate points and certain off-route points, and over irregular routes, between the same points covered by the "grandfather" application except that no authority is sought to operate in North Dakota, and service in Min-

nesota is limited to points on and west of U. S. Highway 52, and on and south of Minnesota Highway 28.

Certain rail and motor carriers oppose the applications, and the Minneapolis Traffic Association and the St. Paul Association of Commerce intervened in support of the applications.

The routes claimed by applicant have been set up by him so that in numerous instances the points to be served and highways involved are duplicated. Inasmuch as authority to operate over a certain route confers the right to utilize such route in conjunction with all other routes authorized, we have set forth in the appendix hereto the routes over which applicant seeks to operate but have eliminated all duplications.² In the "grandfather" application authority [fol. 37] is sought to operate over routes 1 to 10, inclusive, and in the extension application authority is sought to operate over all routes except routes 8 and 10, and that part of route 9 between Salem and Stanley Corners, S. Dak.

Although the extension application was not seasonably filed to protect operations instituted during the period between June 1, 1935, the so-called "grandfather" date, and October 15, 1935, the effective date of section 206 of the act, the so-called interim period, the "grandfather" application was seasonably filed by applicant and included the operations for which authority is sought by the extension application. Pursuant to the principles enunciated in *Fisher Common Carrier Application*, 17 M. C. C. 565, as modified in 20 M. C. C. 561, such interim operations have been lawfully conducted and may be continued until otherwise ordered.

By an order entered March 21, 1938, the Commission, division 5, in No. MC-2318 granted to applicant therein a certificate authorizing the transportation of general commodities, except those of unusual value, and except high explosives, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, from Salem, over U. S. Highway 81 to its junction with U. S. Highway 16, thence over U. S. Highway 16 to Sioux Falls, S. Dak., and return over the same route, but not serving intermediate points. On August 31,

² Reference hereinafter to certain route numbers will mean the routes as described in the appendix hereto.

1940, in No. MC-FC-12751, the Commission, division 5, authorized the substitution of applicant herein as applicant in No. MC-2318, and No. MC-47644 (Sub-No. 4) has been assigned to applicant herein covering the rights so acquired.

For approximately 7 years prior to June 1, 1935, applicant was employed by J. W. Crabb, doing business as Northwestern Transportation Company, a common carrier of property by motor vehicle in the same general territory in which applicant seeks authority to operate. On or about March 9, 1935, Crabb sold and transferred his motor carrier property and operating rights to Wilson Storage & Transfer Company, a common carrier which claims to have continued the operations so acquired. Applicant continued in the employ of Wilson Storage & Transfer Company until about April 1, 1935 when he commenced the operations here considered.

When applicant started his own operation he utilized two trucks. On April 9, 1935 he added two tractor and semi-trailer units. On June 1, 1935 he operated no other equipment. There is no doubt that applicant transported commodities of a general nature between Minneapolis and St. Paul, hereinafter called the Twin Cities, within which term we shall also include South St. Paul, Minn., on the one hand, and, on the other, Brookings, Huron, and Mitchell, S. Dak. Applicant claims that routes 1 to 6, inclusive, and that part of route 7 which is in South Dakota were used in performing such service. Protestants sought to prove by the testimony of three witnesses who were formerly employed as drivers by applicant, one of whom was then employed by one of the protestants, that operations by applicant prior to June 1, 1935, were actually confined to route 1. While these witnesses testified generally that they knew of no other operations conducted by applicant, one of them corroborated applicant's testimony to the extent that prior to June 1, 1935, applicant operated over routes 1 and 2, through Huron, and route 4, through Howard, S. Dak., between the Twin Cities and Mitchell, in the transportation of general freight, as well as over route 3, through Sioux Falls, in the transportation of eggs from Mitchell to the Twin Cities. Applicant introduced an exhibit listing road-expense items incurred by drivers prior to June 1, 1935, at Huron, Brookings, and Manchester, S. Dak., Gaylord, Chaska, Lake Benton, Tracy, Lamberton, and Cologne, Minn., which are points on route 1; at Ivanhoe

and Marshall, Minn., and White, S. Dak., on route 2; at Sioux Falls and Pumpkin Center, S. Dak., and at Belle [fol. 38] Plaine, St. Peter, LeSueur, Luverne, Fairmont, Mankato, Jordan, Worthington, and Jackson, Minn., on route 3; and at Artesian and Madison on route 4. Madison is also a point on route 5: On April 13, 1935, applicant sought authority from the South Dakota Board of Railroad Commissioners to operate to or from Brookings, Volga, Arlington, Hetland, Lake Preston, Manchester, Iroquois, Cavour, Forestburg, and Mitchell, S. Dak., which are points on route 1, Artesian and Howard, S. Dak., on route 4, and Fulton, Farmer, Spencer, Salem, Winfred, Junius, and Madison, on route 5. Tariffs filed with the South Dakota Commission on May 22, 1935, however, did not show rates to each of the points named above. Also, in his extension application it is stated by applicant that operation over the routes described therein were instituted on various dates between June 1, and October 15, 1935. Applicant explained that these dates actually refer to the time when operations were instituted at certain points on the routes and do not refer to operations over the routes. This explanation is substantiated by the evidence. For example, it is stated in the extension application, that operation over route 1 between St. Paul and Mitchell, through Huron, was instituted on September 17, 1935. However, the record clearly shows, and protestants concede, that such operations were actually instituted prior to June 1, 1935. In view of all the evidence mentioned above we are of the opinion that applicant has satisfactorily established operations over routes 1 to 5, inclusive, in the transportation of general commodities. Applicant admits that operations over routes 8 to 12, inclusive, to Yankton, Vermillion, and Elk Point, S. Dak., were not instituted until after June 1, 1935, nor is there convincing evidence that operations were conducted over routes 6 and 7 on and prior to the "grandfather" date.

Prior to June 1, 1935 applicant served the intermediate points on routes 1, 2, 4, and 5 of Brookings, Iroquois, Forestburg, and Madison. Applicant does not claim the right to transport interstate shipments from the Twin Cities to points on his routes in Minnesota, but claims that such points were served eastbound from South Dakota. Although the proof of service at intermediate points on the above routes is not impressive, when considered in

connection with the fact that operations by applicant were instituted only 2 months prior to the statutory date and the testimony of applicant that he did not limit his service to terminal points but held out service at all intermediate points and actually solicited such business, we are convinced that he should be authorized to serve all intermediate points on routes 1, 2, 4, and 5, and that a restriction to serve certain intermediate points in one direction only would make the authority granted unnecessarily complicated and it will not be imposed.

Although applicant's testimony that he transported general commodities over route 3 and that he also solicited shipments at intermediate points on that route is not directly contradicted, he admits that no service was rendered to intermediate points on that route on and prior to June 1, 1935. Inasmuch as Sioux Falls, an intermediate point on this route, is the largest city in South Dakota and an important gateway for South Dakota freight, we are of the opinion that applicant has failed to establish such bona fide operation to points on this route as would entitle him to rights under the "grandfather" clause to serve all intermediate points thereon.

In addition to the operations conducted over regular routes described above, applicant also claims to have been engaged in the transportation of general commodities over irregular routes between points in that part of South Dakota described in his amended "grandfather" application, on the one hand, and on the other, points in Minnesota. He explained that he did not keep complete records during the first few months of operation and that no billing was made on shipments moving from South Dakota points to points in Minnesota which were not handled through his terminal at the Twin Cities, where all of his billing was done. On the contrary such shipments were covered only by memoranda of the drivers on shippers' bills of lading, copies of which were not retained. He testified that in this service he hauled various commodities, including potatoes, farm produce, canned goods, construction machinery [fol. 39] and supplies, building supplies and materials, machinery, printing presses, and household goods. Applicant's testimony relating to irregular route operations is supported by reference to only nine specific shipments handled on and prior to June 1, 1935, consisting of one shipment of potatoes from Adkinson, Minn., to Huron,

three shipments each of potatoes from Baker and Hill City, Minn., to Huron, one shipment of malted milk from Huron to White Bear, Minn., and one shipment of merchandise from St. Paul to Miller, S. Dak. Although applicant contends that records covering all such movements during that period are not available, an examination of the exhibits showing all movements during October and November, 1938, which are the only months after 1935 for which complete abstracts of shipments were furnished, and during which period no lack of documentary evidence is claimed, shows that out of approximately 3,300 shipments handled, only 13 shipments are shown to have moved to or from only seven points which are not on his regular routes. While the testimony of applicant as to operations over irregular routes as substantiated by reference to particular shipments handled before June 1, 1935, might warrant granting of authority to operate over irregular routes, the complete documentary evidence covering a subsequent period during 1938 strongly indicates that applicant's business has evolved into that of a regular-route operation with only occasional or sporadic trips to off-route points or points in irregular-route territory. We conclude that upon the evidence we are not warranted in granting applicant authority to transport either general or specific commodities over irregular routes under the "grandfather" clause of the act.

Protestants contend that all of applicant's operations in South Dakota have not been bona fide because of his failure, on and prior to the statutory date, to hold authority from the South Dakota Commission to serve all of the points claimed in that State. The record shows, however, that applicant frankly admitted to the South Dakota Commission in September 1935, that he had been operating in excess of the authority granted to him because he was under the impression that points served only in the handling of interstate freight did not need to be listed in the State authority. Temporary authority to serve the additional points was granted by the South Dakota Commission on September 19, 1935 and applicant was then cautioned not to operate in excess of the authority granted. The record shows that applicant has conducted his operations openly and without concealment or disguise, and there is no evidence, other than the arrest of a driver on one occasion, that the State regulatory authorities ever sought to

restrain applicant's operations. We conclude that applicant was and has been in bona fide operation within the meaning of the act.

We shall now discuss operations instituted by applicant during the so-called interim period between June 1 and October 15, 1935 and the evidence tending to show a need for the continuance of such operations or the adequacy of other facilities. The first shipment to an intermediate point on route 3 was handled by applicant on June 4, 1935 to Sioux Falls. During the following months prior to October 15, 1935 he transported approximately 30 shipments of a general nature and between October 15, 1935 and January 1, 1936 about 95 shipments were transported to or from Sioux Falls. During the interim period shipments are also shown to the intermediate points Alexandria and Emery, S. Dak., on route 3 and Dell Rapids, S. Dak., on route 6. Applicant also transported approximately 25 shipments of various commodities to Yankton from the Twin Cities and two shipments each to the intermediate points Vermillion and Parker, S. Dak. over routes 9, 10, and 11 during the interim period. Although the record shows that thereafter numerous shipments to these points were transferred to other carriers at Sioux Falls for ultimate delivery, it is shown that applicant also transported a substantial number of shipments directly to those points. During October 1938 applicant transported 26 shipments directly to or from Yankton on eight trips, four shipments on one day during [fol. 40] November 1938, 67 shipments on eight dates during December 1938, and 63 shipments on 13 trips during January 1939. During the same months in 1938 and 1939 applicant transported directly 22 shipments on eight different dates to the intermediate point Vermillion, nine shipments to the intermediate point Dell Rapids, and one shipment each to the intermediate points Centerville and Parker. In connection with the shipments handled directly to Yankton a shipper witness testified that he frequently has need for a rush service to Yankton, and applicant testified that such rush shipments are handled directly on his own trucks when he fails to make connections at Sioux Falls with the interline carrier. The only service to Elk Point, the terminus of route 12, consists of one shipment of wagon parts transported on October 2, 1935.

Representatives of the Minneapolis Traffic Association and the St. Paul Association of Commerce intervened in

support of the application at the request of approximately 25 and 14 of their members, respectively. These associations represent business and shipping interests in the Twin Cities. Their clients do not want to lose any service which they now have and their representatives testified that a continuation of applicant's service is necessary for the distribution of their products in South Dakota. Representatives of a number of large shippers at the Twin Cities testified that they have used applicant's service in shipping a substantial amount of freight to points in South Dakota including Yankton, Vermillion, Sioux Falls, and other points on applicant's routes.

Protestants presented the testimony of two witnesses from Yankton and four shipper witnesses from Sioux Falls, who testified that they do not require any additional service to that rendered by carriers other than applicant. It appears, however, that they may have been confused in believing that an additional service by applicant was contemplated rather than a continuation of existing operations. Protestants also introduced the testimony of a number of local South Dakota truckers as well as two or three shipper witnesses from points not on applicant's regular routes who testified that no additional service is required.

Protestants contend that proof of past operations by applicant is not indicative of a need for such service, and they allege that he was able to obtain a large volume of traffic by reason of assessing lower rates than those of other carriers operating between the Twin Cities and points in South Dakota. While this may have been true when applicant began operating, the record shows that for a number of years applicant has been a member of a tariff bureau which publishes a tariff for approximately 150 to 200 carriers operating in the territory involved. Only two other motor carriers are operating a single-line service between Sioux Falls and the Twin Cities. The manager of one of these testified that during a period of three years prior to the hearing his company's business has been growing; that the same publishing agent publishes the same rates for both applicant and his company; and that they have met the competition of each other in a legitimate manner.

Applicant has shown that his business has grown continuously until in 1938 he was handling more than 1,000,000 pounds of freight per month and in October 1938 he served 170 shippers and 45 consignees in the Twin Cities and 11

shippers and 144 consignees in Sioux Falls, in addition to about 50 shippers and 300 consignees at other points.

There is other service between the Twin Cities and points on applicant's routes in South Dakota by rail and motor carriers, and no witness testified directly that applicant's service was absolutely necessary in the conduct of his business. However, the testimony of these witnesses, when considered in connection with the evidence of past operations by applicant conducted continuously since prior to October 15, 1935, the volume of freight handled by him and the fact that the business of other carriers operating in the same territory has also grown during the years immediately preceding the hearing, is convincing evidence that his service [fol. 41] is fulfilling a public need and that we should not require the discontinuance of his existing service between the Twin Cities and Sioux Falls, Yankton, and intermediate points on routes 3, 6, 9, 10, and 11 in connection with operations over the routes applicant is found entitled to operate by reason of his "grandfather" rights.

Applicant has also shown a few shipments to points in the South Dakota and Minnesota territories covered by his amended application which are not on his regular routes. Most shipments handled by applicant destined to such points, however, were transferred to other carriers at points on his routes for ultimate delivery and it appears that direct deliveries were made by him only occasionally, when it was convenient for him to do so. There are numerous carriers serving these off-route points from points on applicant's routes and the evidence of the few shipments handled directly by applicant is not convincing that there is a need for such service by him.

The record shows that applicant has transported a wide variety of commodities, including uncrated household goods, but it does not show that he ever handled commodities of unusual value, dangerous explosives, commodities in bulk, commodities requiring special equipment, or those injurious or contaminating to other lading. The record warrants the conclusion that applicant is fit, able financially and otherwise, to conduct the operations hereinafter authorized. All other operations instituted during the interim period should be discontinued.

We find, in number MC-47644, that on and continuously since June 1, 1935, applicant was and has been in bona fide operation, in interstate or foreign commerce, as a common

carrier by motor vehicle of general commodities, except those of unusual value and except dangerous explosives, commodities in bulk, and commodities requiring special equipment, between the points and over routes 1 to 5, inclusive, described in the appendix hereto, serving all intermediate points except those on route 3 and serving South St. Paul, Minn., as an off-route point.

We further find, in No. MC-47644 (Sub-No. 1), that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, of general commodities, with the exceptions specified above, between the points and over routes 6, 10, and 11, and that part of route 9 between Stanley Corners and Yankton, S. Dak., described in the appendix hereto, serving all intermediate points on those routes, except Beresford, S. Dak., and all intermediate points on route 3, also described in the appendix hereto; that applicant is fit, willing and able properly to perform such service and to conform to the provisions of the act and our rules and regulations thereunder.

We further find that a certificate authorizing the operations described in the above findings should be granted, and that in all other respects the applications should be denied.

Upon compliance by applicant with the requirements of sections 215 and 217 of the act, and with our rules and regulations thereunder, an appropriate certificate will be issued. An order will be entered denying the applications except to the extent granted herein, and requiring applicant to cease and desist from all operations in interstate or foreign commerce instituted between June 1 and October 15, 1935, except those for which authority is granted herein.

[fol. 42]

Appendix

Route 1. Between St. Paul, Minn., and Mitchell, S. Dak.:

From St. Paul over city streets to Minneapolis, Minn., thence over U. S. Highway 212 to Glencoe, Minn., thence over Minnesota Highway 22 to Gaylord, Minn., thence over Minnesota Highway 19 to Winthrop, Minn., thence over Minnesota Highway 15 to New Ulm, Minn., thence over U. S. Highway 14, through Brookings, S. Dak., to Huron, S. Dak., and thence over South Dakota Highway 37 to Mitchell.

Route 2. Between Winthrop, Minn., and Brookings, S. Dak.:

From Winthrop over Minnesota Highway 19 to the Minnesota-South Dakota State line, thence over an unnumbered highway, through White, S. Dak., to its junction with U. S. Highway 77, thence over U. S. Highway 77 to Brookings.

Route 3. Between St. Paul, Minn., and Mitchell, S. Dak.:

From St. Paul over city streets to Minneapolis, thence over U. S. Highway 169 to Mankato, Minn., thence over Minnesota Highway 60 to Madelia, Minn., thence over Minnesota Highway 15 to Fairmont, Minn., and thence over U. S. Highway 16, through Sioux Falls, S. Dak., to Mitchell.

Route 4. Between Brookings, S. Dak., and junction South Dakota Highways 34 and 37:

From Brookings over U. S. Highway 77 to its junction with South Dakota Highway 34, and thence over South Dakota Highway 34 through Howard, S. Dak., to its junction with South Dakota Highway 37.

Route 5. Between Arlington, S. Dak., and junction South Dakota Highway 38 and U. S. Highway 16:

From Arlington over U. S. Highway 81 to Salem, S. Dak., and thence over South Dakota Highway 38 to its junction with U. S. Highway 16.

Route 6. Between Sioux Falls, S. Dak., and junction U. S. Highway 77 and South Dakota Highway 34:

From Sioux Falls over U. S. Highway 77 to its junction with South Dakota Highway 34, near Colman, S. Dak.

Route 7. Between Lone Tree, S. Dak., and junction U. S. Highways 59 and 14:

From Lone Tree over South Dakota Highway 34 to South Dakota-Minnesota State Line, thence over Minnesota Highway 47 to Slayton, Minn., and thence over U. S. Highway 59 to its junction with U. S. Highway 14, near Garvin, Minn.

Route 8. Between Mitchell, S. Dak., and Yankton, S. Dak.:

From Mitchell over South Dakota Highway 37 to its junction with South Dakota Highway 50, and thence over South Dakota Highway 50 to Yankton.

Route 9. Between Salem, S. Dak., and Yankton, S. Dak.:

From Salem over U. S. Highway 81, through Stanley Corners, S. Dak., to Yankton.

[fol. 43] **Route 10. Between Vermillion, S. Dak., and Pumpkin Center, S. Dak.:**

From Vermillion over South Dakota Highway 19 to Pumpkin Center.

Route 11. Between Sioux Falls, S. Dak., and Vermillion, S. Dak.:

From Sioux Falls, S. Dak., over U. S. Highway 77 to its junction with South Dakota Highway 50, and thence over South Dakota Highway 50 to Vermillion.

Route 12. Between Elk Point and junction South Dakota Highway 50 and U. S. Highway 77.

From Elk Point over U. S. Highway 77 to its junction with South Dakota Highway 50.

Return over these routes.

[fol. 44] **EXHIBIT "D" TO COMPLAINT**

Order

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 24th day of October A. D. 1941.

No. MC-47644

C. W. Styer Common Carrier Application

No. MC-47644 (Sub-No. 1)

C. W. Styer—Extension—Elk Point

Investigation of the matters and things involved in these proceedings having been made, and said division, on the date hereof, having made and filed a report herein con-

taining its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That said applications, except to the extent a certificate is granted in said report, be, and they are hereby, denied, effective December 6, 1941.

It is further ordered, That applicant be, and he is hereby, notified and required to cease and desist, on or before December 6, 1941, from all operations in interstate or foreign commerce instituted between June 1 and October 15, 1935, except to the extent for which authority is granted in said report.

By the Commission, division 5.

W. P. Martel, Secretary (Seal).

[fol. 45]

EXHIBIT "E" TO COMPLAINT

Certificate of Public Convenience and Necessity

No. MC 47644*

Cornelius William Styer,

Doing Business as Northern Transportation Company,

St. Paul, Minnesota.

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 11th day of July, A. D. 1942:

After due investigation, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

It is ordered, That the said carrier be, and it is hereby, granted, this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a com-

* This certificate also embraces the operating rights of the above-named carrier under Docket No. MC 47644 Sub 1, Extension of Operation.

mon carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

It is further ordered, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below :

General commodities, except those of unusual value, and except dangerous explosives, commodities in bulk, and those requiring special equipment, over regular routes,

Between St. Paul, Minn., and Mitchell, S. Dak. :

From St. Paul over city streets to Minneapolis, Minn., thence over U. S. Highway 212 to Glencoe, Minn., thence over Minnesota Highway 22 to Gaylord, Minn., thence over Minnesota Highway 19 to Winthrop, Minn., thence over Minnesota Highway 15 to New-Ulm, Minn., thence over U. S. Highway 14 via Brookings, S. Dak., to Huron, S. Dak., and thence over South Dakota Highway 37 to Mitchell ;

From St. Paul to Minneapolis as specified above, thence over U. S. Highway 169 to Mankato, Minn., thence over Minnesota Highway 60 to Madelia, Minn., thence over Minnesota Highway 15 to Fairmont, Minn., and thence over U. S. Highway 16, via Sioux Falls, S. Dak., to Mitchell ; and

Return over these routes to St. Paul.

Service is authorized to and from the off-route point of South St. Paul, Minn.

[fol. 46] Between Winthrop, Minn., and Brookings, S. Dak. :

From Winthrop over Minnesota Highway 19 to the Minnesota-South Dakota State line, thence over un-numbered highway, via White, S. Dak., to junction U. S. Highway 77, and thence over U. S. Highway 77 to Brookings ; and return over the same route.

Between Brookings, S. Dak., and junction South Dakota Highways 34 and 37 :

From Brookings over U. S. Highway 77 to junction South Dakota Highway 34, thence over South Dakota Highway 34, via Howard, S. Dak., to junc-

tion South Dakota Highway 37; and return over the same route.

Between Arlington, S. Dak., and junction South Dakota Highway 38 and U. S. Highway 16:

From Arlington over U. S. Highway 81 to Salem, S. Dak., thence over South Dakota Highway 38 to junction U. S. Highway 16; and return over the same route.

Between Sioux Falls, S. Dak., and junction U. S. Highway 77 and South Dakota Highway 34:

From Sioux Falls over U. S. Highway 77 to junction South Dakota Highway 34, near Colman, S. Dak.; and return over the same route.

Between Stanley Corners, S. Dak., and Yankton, S. Dak.:

From Stanley Corners over U. S. Highway 81 to Yankton, and return over the same route.

Between Vermillion, S. Dak., and Pumpkin Center, S. Dak.:

From Vermillion over South Dakota Highway 19 to Pumpkin Center; and return over the same route.

Between Sioux Falls, S. Dak., and Vermillion, S. Dak.:

From Sioux Falls, S. Dak., over U. S. Highway 77 to junction South Dakota Highway 50, thence over South Dakota Highway 50 to Vermillion; and return over the same route.

Service is authorized to and from all intermediate points on the above-specified routes, except Beresford, S. Dak.

And it is further ordered, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

By the Commission, division 5.

W. P. Bartel, Secretary (Seal).

[File endorsement omitted.]

[fol. 47] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ANSWER OF THE UNITED STATES—Filed December 23, 1942

Now comes the United States and in answer to the complaint filed herein says:

1. Admits the allegations of paragraphs 1 through 11 of the complaint, except that it denies that the plaintiffs suffer or will suffer any illegal prejudice or injury by reason of the Commission's order, as is alleged in paragraph 11 of the complaint.

2. Denies the allegations of paragraphs 12 and 13 of the complaint.

. Wherefore, it is respectfully prayed that the complaint herein be dismissed.

Robert L. Pierce, Special Assistant to the Attorney General, Department of Justice, Washington, D. C.

Thurman Arnold, Assistant Attorney General.

Victor E. Anderson, United States Attorney.

[fol. 48] I hereby certify that a copy of the foregoing answer has this day been served upon each of the following persons by mail:

Nelson Thomas, Esq., Interstate Commerce Commission, Washington, D. C.

Warren Newcome, Esq., 275 E. 4th Street, Saint Paul, Minnesota.

Harry R. Moore, Esq., 1100 First National-Soo Line Bldg., Minneapolis, Minnesota.

Fred W. Putnam, Esq., First National-Soo Line Bldg., Minneapolis, Minnesota.

Robert L. Pierce, Special Assistant to the Attorney General.

December 17, 1942.

[File endorsement omitted.]

[fol. 49] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed
December 19, 1942

Comes now the Interstate Commerce Commission (hereinafter called the Commission), one of the defendants herein, and for its answer to the complaint filed in the above-entitled proceeding, respectfully shows:

I.

That for the purposes of this suit the Commission admits the allegations of paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the complaint, except that the Commission alleges and shows that neither of the recommended reports and orders of the joint boards, referred to in paragraphs 7 and 8 of the complaint, copies of which are attached as Exhibits A and B to the complaint, has any legal force or effect, and except that the Commission denies that the plaintiffs suffer or will suffer any prejudice or injury by reason of the Commission's report, order and certificate, as is alleged in paragraph 11 of the complaint.

[fol. 50]

II.

The Commission denies the allegations of paragraphs 12 and 13 of the complaint.

III.

Further answering the complaint, the Commission alleges and shows that its report and order of October 24, 1941, Exhibits C and D to the complaint, were made in proceedings duly instituted before it entitled, respectively, No. MC-47644, *C. W. Styer Common Carrier Application*, and No. MC-47644 (Sub-No. 1), *C. W. Styer—Extension—Elk Point*, in which proceeding all parties thereto, including the plaintiffs herein, were accorded the full and fair hearing as prescribed by law, and that a large volume of evidence was received in said proceedings and submitted to Division 5 of the Commission; whereupon, on October 24, 1941, said Division 5 disposed of both of said proceedings in a single report and order, true copies thereof being attached to the complaint as Exhibits C and D; to wit, on April 6, 1942,

the entire Commission denied the petition of the plaintiffs for reconsideration of said report and order.

The Commission further alleges and shows that the findings and conclusions set forth in said report supports the order made in said proceedings and that the findings and conclusions of the Commission were and are, and that each of them was and is, fully supported and warranted by the evidence adduced in said proceedings; that in making and affirming said order the Commission and its said Division 5, weighed carefully each fact, circumstance and condition disclosed by the evidence presented to it by the parties to the proceeding and their respective counsel, including matters covered by the allegations of the complaint herein.

[fol. 51] The Commission further alleges and shows that said order was not made or entered by it either arbitrarily or unjustly or contrary to the relevant evidence or without evidence to support and warrant it and the findings upon which it was based; and that in making said order the Commission did not exceed its authority, and the Commission denies each of and all the allegations to the contrary contained in the complaint.

Except as herein expressly admitted, the Commission denies each of and all the allegations contained in the complaint, especially in so far as they conflict with the allegations herein or with the statements, findings, determinations or conclusions stated in the Commission's report, Exhibit C to the complaint.

All of which matters and things the Commission is ready to aver, maintain and prove.

Wherefore, the defendant prays that the complaint herein be dismissed.

Interstate Commerce Commission, by Nelson Thomas,
Attorney, Room 3329, Interstate Commerce Bldg.,
Washington, D. C.

Daniel W. Knowlton, Chief Counsel, of Counsel.

[fol. 52] *Duly sworn to by William E. Lee. Jurat omitted in printing.*

[fol. 53] I hereby certify that copies of the foregoing answer have this day been served upon the following persons by mail:

Warren Newcome, Esq., Attorney at Law, 275 East 4th Street, St. Paul, Minn.

Amos Mathews, Esq., Attorney at Law, 517 West Adams Street, Chicago, Ill.

Robert L. Pierce, Esq., Special Assistant to the Attorney General, Department of Justice, Washington, D. C.

Perry R. Moore, Esq., Attorney at Law, 1100 First National-Soo Line Bldg., Minneapolis, Minn.

Fred W. Putnam, Esq., Attorney at Law, 826 First National-Soo Line Bldg., Minneapolis, Minn.

(Signed) Nelson Thomas, Attorney.

Dated: December 15, 1942.

[File endorsement omitted]

[fol. 54] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ANSWER OF CORNELIUS W. STYER—Filed February 16, 1943

Now comes Cornelius W. Styer, by his attorney; and for his answer to the complaint herein:

I

Admits the allegations of the complaint as set forth in paragraphs "1", "2", "3", "4", "5", "6", "7", "8", "9" and "10".

II

As to the allegations set forth in paragraph "11", "12" and "13" of the complaint, this defendant denies the same, and each and every part thereof.

[fol. 55]

III

As a further defense to said action this defendant, Cornelius W. Styer, shows to the Court that at all times mentioned in said complaint, and for many years prior thereto, this defendant has carried on its operations as a common carrier of property by motor vehicle, serving the territory upon the routes duly authorized by the Interstate Commerce Commission in its order dated October 24th, 1941; that the plaintiffs herein filed a petition to the Interstate Commerce Commission asking for a reconsideration of said

report and order of the said Commission, and on April 6th, 1942, the Commission denied said motion for reconsideration and, pursuant to the order of October 24th, 1941, a certificate of public convenience and necessity was issued on the 11th day of July, 1942.

That this defendant Styer, subsequent to the order of the Commission of October 24th, 1941, and subsequent to the order of the Commission dated April 6th, 1942, denying these plaintiffs' petition to the Commission for reconsideration, and subsequent to the issuance to him of the formal certificate of public convenience and necessity dated July 11th, 1942, and because these plaintiffs took no action for a court review of the Commission's order of October 24th, 1941 until long after such events; relied upon the Commission's final determination of the issues in said proceeding and relied upon the failure of the plaintiffs, with reasonable promptness, to bring about a court review, and thereafter expended considerable sums of money in the carrying on, maintaining and improving the public service authorized by said Commission; that after October 24th, 1941, defendant Styer purchased certain interstate rights and privileges from one James V. Hammond, paid therefor the sum of \$500.00 and expended moneys in soliciting [fol. 56] and building up the service to from and between the points in the route acquired, namely Sioux City, Iowa, to Yankton, South Dakota and certain intermediate points; that said acquisition was approved by the Interstate Commerce Commission in March, 1942; that after October 24th, 1941 and in order to maintain and improve service over his entire system, the defendant Styer borrowed the sum of \$6,000.00 from his brother Clarence Styer, and as security therefor assigned the interstate rights and privileges here assailed.

IV

That almost one year after the issuance of the order of the Interstate Commerce Commission on October 24th, 1941, and subsequent to the issuance of the certificate of public convenience and necessity on July 11th, 1942, defendant, Cornelius W. Styer, on September 22nd, 1942, entered into a contract with Glendenning Motorways, Inc. of St. Paul, Minnesota, wherein said Styer agreed to lease to said Glendenning Motorways, Inc. certain properties, rights, privileges, and franchises, including all of the rights

authorized by the order of October 24th, 1941, for a period of one year, and therein gave to said Glendenning Motorways, Inc. an option to purchase the properties, rights, privileges and franchises so leased; that said contract of September 22nd, 1942, was modified by a supplemental agreement dated the 6th day of October, 1942, and thereafter on the 23rd day of October, 1942, the said Glendenning Motorways, Inc. did elect to exercise its option to purchase the properties, rights, privileges and franchises described in the agreement of September 22nd, 1942, as amended on October 6th, 1942; that the properties, rights, privileges and franchises and agreements are more specifically described in said contracts, a copy of which contracts are hereto attached and made part hereof, being marked *Exhibit "A"* (contract of September 22nd, 1942), *Exhibit [fol. 57] "A-1"* (supplemental contract of October 6th, 1942,) and *Exhibit "A-2"* (exercise of option); and that all of said contracts were made subject to the approval of the Interstate Commerce Commission; that upon the exercise of said option and on the 23rd day of October, 1942, said Styer and Glendenning Motorways, Inc. amended their then pending application to the Interstate Commerce Commission to approve the one year lease provided for in said *Exhibit "A"* so as to request the order of the Commission approving the purchase of the rights and privileges described therein, pursuant to said option, for the price set forth therein, namely \$66,485.57, of which \$51,485.57 represented the sale price of the physical property and the sum of \$15,000.00 represented the rights, privileges and franchises described therein; that said Commission set the amended application for hearing on October 31st, 1942, and on said date said hearing was held thereon in Minneapolis, Minnesota; that on the morning of said hearing the purchaser Glendenning Motorways, Inc., although not named as a party to this action, received a copy of the complaint from one or more of the plaintiffs herein, although said complaint was not served upon defendant Styer until two days later; that prior to the receipt of such complaint by Glendenning Motorways, Inc., this defendant had not been advised, nor had any means of knowing, that this proceeding would be instituted by the plaintiffs herein; that said plaintiffs had taken no action to review the order questioned herein for almost one year from its issuance, October 24th, 1941, had taken no action

for such review after the denial of their petition of reconsideration on April 6th, 1942—more than six months thereafter, and had taken no action whatsoever after the issuance of public convenience and necessity on July 11th, 1942; that at the aforesaid hearing before the said Com-[fol. 58] mission on October 31st, 1942, these plaintiffs vigorously contested the acquisition of this defendant's property and privileges by Glendenning Motorways, Inc., and urged among other things that this action had been or was about to be commenced, and that said Glendenning Motorways, Inc. was put upon notice through being furnished a copy of the complaint; that by reason of such facts said Styer alleges that the commencement and maintenance of the instant action is but part and parcel of the attempts of these plaintiffs before the Interstate Commerce Commission to block the approval of this defendant's favorable sale to Glendenning Motorways, Inc., and that this action is not brought for the sole intent and purpose of testing the correctness of the Commission's order of October 24th, 1941.

That the aforesaid proceeding for the Commission's approval of said purchase has been submitted to and is now pending before said Interstate Commerce Commission.

V

That on October 1st, 1942, defendant Styer and Glendenning Motorways, Inc. filed an application with the Interstate Commerce Commission, under Section 210, Part 2, of the Interstate Commerce Act as amended, requesting temporary authority in Glendenning Motorways, Inc. for the operation of the properties described in said "Agreement of Lease", dated September 2nd, 1942, and on October 13th, 1942, said order for said temporary authority was issued, a copy thereof being attached hereto and marked "*Exhibit B*"; that said Glendenning Motorways, Inc., pursuant thereto, now operates all of the properties and privileges of this defendant Styer.

[fol. 59]

VI

That the said plaintiffs herein were fully advised of the order of the Interstate Commerce Commission, under date of October 24th, 1941, and of all the proceedings subsequent thereto, and took no action to stop the issuance of

the certificate of public convenience and necessity after the order of the Commission dated April 6th, 1942, and until the commencement of this action; that said plaintiffs rested upon their rights and delayed an unreasonable length of time before starting this action to have said proceedings reviewed by this Court; that this defendant, because of said failure of said plaintiffs to proceed promptly in securing a review by this Court of said action of the Interstate Commerce Commission, believed that no such proceeding would be commenced, and relying thereon and on September 22nd, 1942, did enter into the contract with Glendenning Motorways, Inc. to sell a substantial part of his rights under said order of October 24th, 1941, and has very materially changed his position.

VII

That by their laches plaintiffs have waived any rights they may have had to have a review of the action of the Interstate Commerce Commission after said Commission, with due notice to all parties and a full hearing thereon, had granted a certificate of public convenience and necessity to Cornelius W. Styer, and said plaintiffs are now estopped from prosecuting this action as a matter of equity.

Wherefore, Defendant prays:

(1) That the action of the Interstate Commerce Commission in issuing its order of October 24th, 1941, and the issuance of certificate of public convenience and necessity [fol. 60] pursuant thereto on July 11th, 1942, be in all things sustained; and

(2) That the action herein be dismissed, and that the defendant recover its costs.

Perry R. Moore, of Stinchfield, Mackall, Crounse & Moore, Attorneys for Defendant, Cornelius W. Styer, 1100 First National-Soo Line Building, Minneapolis, Minnesota.

Duly sworn to by Perry R. Moore. Jurat omitted in printing.

[fol. 61]

EXHIBIT "A" TO ANSWER

I, William Gordon Glendenning, President of Glendenning Motorways Inc. of Saint Paul, Minnesota, and I, Cornelius William Styer, owner of Northern Transportation Company of Saint Paul, Minnesota, do hereby certify that the attached "Agreement of Lease" is a true and correct copy of the original "Agreement of Lease."

Given under our hands, this 22nd day of September, 1942.

William Gordon Glendenning, Cornelius William Styer.

[fol. 62]

Agreement of Lease

Made at St. Paul, Minnesota this 22nd day of September, 1942, by and between Glendenning Motorways Inc., a Minnesota corporation, St. Paul, Minnesota, hereinafter called "Glendenning", and Cornelius William Styer, doing business as Northern Transportation Company, St. Paul, Minnesota, hereinafter called "Styer".

Whereas Styer is engaged in the business of a motor common carrier in interstate commerce operating pursuant to Certificates of Public Convenience and Necessity issued by the Interstate Commerce Commission, bearing No. MC-47644, and Sub. Nos. 1, 2, 3, (including 4, 5, 6, and 9) and Sub. No. 7, and certain temporary authorities, 11 TA, 13 TA, 14 TA, 16 TA and 18 TA, and pursuant, also, to certain pending applications and other evidences of authority from said Commission, as set forth in Exhibit I attached hereto and made a part hereof; and in addition said Styer operates as an intrastate carrier in the States of South Dakota and Nebraska pursuant to the authorities set forth in Exhibit I (b); that said Styer operates said business with the trucks, tractors, semi-trailers, and vehicles set forth in the schedule attached hereto marked Exhibit II, and

Whereas said Styer finds himself threatened with the loss of a substantial part of his rolling equipment, and [fol. 63] desires to lease the aforesaid property and all of his rights, privileges and franchises accruing by virtue of the aforesaid orders and Certificates of Public Convenience and Necessity, or other evidences of operating authority, to Glendenning for the considerations hereinafter set forth, and

Whereas Glendenning is also engaged in the business of a motor common carrier over a substantial area from Chi-

cago throughout portions of the states of Wisconsin, Iowa, Minnesota and North Dakota, all pursuant to the authority of the Motor Carrier Act and the Interstate Commerce Commission; that provided the Interstate Commerce Commission will grant Glendenning's request for temporary authority to operate the property and privileges herein described; Glendenning is desirous of leasing the same under the terms and conditions hereinafter set forth, and to that end Glendenning intends to request the Interstate Commerce Commission for such temporary authority at once; that both of the parties intend also to make application at once to the Interstate Commerce Commission for its order approving this lease transaction and authorizing permanent operation by Glendenning under the terms hereof,

Now, Therefore, subject to the approval of the Interstate Commerce Commission, the parties hereto agree as follows:

[fol. 64] 1. Said Styer hereby leases and lets unto Glendenning, and Glendenning hereby leases and lets from Styer, all of the tangible personal property set forth in the attached schedule marked Exhibit II and the rights, privileges and franchises set forth in Exhibit I, for the period beginning with the effective date of the order of the Interstate Commerce Commission granting Glendenning's request for temporary authority, and shall continue for one year after said effective date of the granting of such temporary authority, subject, however, to its earlier termination by the exercise by Glendenning of the option to purchase the same as hereinafter set forth, and further subject to the said Commission's approval of said purchase. If said Commission refuses to grant the temporary authority requested, this instrument shall not become effective either in whole or in part. If Glendenning exercises his right to purchase, and makes application for the approval thereof to said Commission, and, if said approval is denied, this lease shall terminate thirty days, or at Styer's option for a [fol. 65] lesser period, after the effective date of the order disapproving of such purchase. In such case, Styer shall give ten days notice to Glendenning of the date upon which he expects to resume operation. In such case, also, if Styer elects to resume operations in less than such thirty days, the rental payments shall be pro-rated upon a per diem basis.

If said Commission should not have determined such application (for purchase) upon the expiration of the one-year period set forth above, the term of this lease shall be extended until the effective date of the final order of the Commission determining the same. If such final order approves the purchase, the purchase shall become effective and the lease cancelled. If, after the aforesaid one-year period the Commission disapproves the purchase, this lease shall extend until thirty days after the date of the Commission's order of denial, or at Styer's option for a lesser period, and, if for a lesser period, the rental shall be prorated upon a per diem basis.

2. *Rental.*

(a) *Of the Physical Property*

Glendenning agrees to pay, monthly in advance, as rental for each of the property units described in Exhibit II, the sum set forth on said Exhibit II under the caption "Rental charge per month." The first payment shall become due and payable on the 5th day following the effective date of the Commission's granting temporary authority in Glen-[fol. 66]. denning and succeeding payments of like sums as rental for each unit shall be due and payable on the same date of each month thereafter during the period this lease is in effect. Subsequent monthly payments shall fall on the same date of the month as the first payment date.

If this transaction is approved upon either a temporary or permanent basis, Glendenning will use the equipment described in Exhibit II and shall keep the same in reasonable repair. If, during the period of this lease any one or more of such units is wrecked or otherwise destroyed and, beyond reasonable repair, Glendenning shall not be required to pay the rental sum set opposite the description on Exhibit II of the particular unit so affected but shall pay to Styer a sum equal to the difference between the sale price set forth in Exhibit II, and the total of the monthly rentals theretofore paid upon such unit. If any one or more of such units be withdrawn from service by agreement of the parties, such withdrawal shall not affect the remaining provisions of this lease, and Glendenning shall not be required to pay the rental sum set opposite the description on Exhibit II of the particular unit so affected.

(b) *Rental of the Intangible Property*

Glendenning agrees to pay monthly in advance as rental for the rights, privileges and franchises set forth in Exhibit II the sum of Three Hundred (\$300.00) Dollars a month. The first payment shall become due and payable on the 5th day following the effective date of the order of [fol. 67] the Interstate Commerce Commission granting temporary authority in Glendenning, and a like sum shall be due and payable on the same date of each month thereafter during the period this lease is in effect; it is intended that the subsequent payments shall fall upon the same date of each month as the date of the first payment.

3. Glendenning agrees to request said temporary authority from the Interstate Commerce Commission at once, or as soon as the proper documents may be prepared, and both parties agree to apply to the Commission upon the forms provided for that purpose for its order approving this lease transaction, the latter application to be filed at once or as soon as such documents may reasonable be prepared. Each of the parties hereto agrees to join in both such applications and to furnish all data, information and exhibits required by each of the forms prescribed by the Interstate Commerce Commission for such purposes. Each of the parties also agrees to appear at any hearing called by the Interstate Commerce Commission upon the permanent application, and to furnish such books, data, records, and information as, in the opinion of Glendenning's counsel, shall be necessary and desirable for the successful prosecution of said proceedings. If the application for temporary authority is granted and operation by Glendenning is required to take the form of a lease, and if the Commission in its order requires smaller monthly payments by Glendenning, it is agreed that the amounts to be paid, as set forth in paragraphs 2 (a) and (b), shall be reduced accordingly. If in its order of permanent approval of this lease transaction the Commission shall prescribe or fix, as a condition [fol. 68] of its approval, smaller monthly payments as rental for either the tangible or intangible properties, or modifies the term of the lease, the parties agree to be bound thereby, and such sums as may be so prescribed or fixed, and the term so set forth, shall be substituted for such provisions hereof.

a. Glendenning agrees to pay to Styer within five days after the effective date of the order of the Commission granting temporary authority, in cash, the amount of pre-paid portions of motor vehicle licenses, taxes or permits which are transferred to Glendenning by the particular state officials involved, and for which Glendenning receives credit.

4. It is expressly agreed that Glendenning does not assume to agree to pay, or otherwise become obligated for, any of the debts or obligations of Styer. Note: This provision applies to the lease transaction only. If and when Glendenning exercises his right to purchase, provision is made hereafter for the assumption of certain secured equipment obligations only—and no others.

5. It is understood that Glendenning shall employ Styer upon the commencement of operation under Temporary Authority, if granted, until the Commission approves or disapproves of this lease transaction upon the parties' permanent application in order that the service to the shipping public may be enhanced, and, if approved by the Commission, such employment shall continue throughout the term of the lease unless the parties mutually agree to earlier terminate. The terms of such employment are left to the mutual agreement of the parties. Glendenning has agreed [fol. 69] with Styer that he will employ substantially all of the personnel now in Styer's employ.

6. (a) Styer further agrees that he will continue operations and furnish public service upon his existing system in substantially the same manner as heretofore conducted until the Commission's determination of Glendenning's request for temporary authority to operate the same.

(b) Said Styer further agrees that, if said application for temporary authority is granted, and until the final order of the Interstate Commerce Commission approving this lease transaction, he will not sell, lease, or assign to others, and that, except insofar as required by law or executive order, he will not agree to sell, lease or assign to others all, or any part of, the property, rights, privileges, and franchises described in Exhibits I and II attached hereto without the consent of Glendenning, and, in the event such attempt is made, Styer hereby requests the

Interstate Commerce Commission to honor and accept this agreement as the only effective instrument of lease and sale of the property and rights herein described.

7. (a) It is understood and agreed by the parties that the approval by the Interstate Commerce Commission of the lease of the properties and rights, privileges, and franchises herein described are a condition to the effectiveness of this instrument. It is agreed, however, that the approval of the Interstate Commerce Commission, and the Nebraska State Railway Commission, and the Public Utilities Commission of the State of South Dakota, need not be obtained concurrently. The parties understand and agree that the transfer [fol. 70] of the interstate rights, privileges, and franchises constitute the principal consideration. It is agreed, therefore, that this instrument shall not become effective until the approval of the Interstate Commerce Commission has been obtained, but, if and when obtained, it shall become effective in all its parts applicable to interstate operations, and, as to the intrastate operations, it shall become effective if and when the approval of the aforesaid commissions is obtained. If the consents of said State Commissions are not obtained, the lack thereof shall not affect the amount of the purchase price and rentals to be paid by Glendenning.

(b) It is agreed that Styer will continue operation of such intrastate rights until the approval of this lease by the State Commissions involved.

8. Styer hereby gives and grants unto Glendenning for the period of one year from the date of the order of the Interstate Commerce Commission temporarily approving this lease transaction, the first right and option to purchase the property, rights, privileges and franchises described in Exhibits I and II attached hereto for the considerations hereinafter immediately set forth:

a. For the equipment set forth in Exhibit II attached hereto, the sum of Fifty-One Thousand, Four Hundred Eighty-Five and 57/100 (51,485.57) Dollars.

b. For the rights, privileges, and franchises, interstate and intrastate, set forth in paragraph I above, the sum of Fifteen Thousand and no/100 (15,000.00) Dollars.

[fol. 71] 9. In the event said Glendenning desires to exercise said option, he shall notify Styer thereof in writ-

ing, declaring therein his intention to so do and shall, within a reasonable time thereafter, apply to the Interstate Commerce Commission for approval thereof. Upon approval thereof by said Commission, and not before, the terms of purchase here set forth shall become effective in all respects. The total purchase price above set forth, being the sum of Sixty-Six Thousand, Four Hundred Eighty-Five and 57/100 (66,485.57) Dollars, shall then be subject to the following deductions:

a. The total of the monthly rental payments theretofore paid by Glendenning as provided for in paragraphs 2 (a) and 2 (b) above.

b. The equipment described in Exhibit II is now encumbered by various security instruments held by certain creditors. It is contemplated that the payments of rental by Glendenning during the lease period shall be assigned by Styer to certain of the existing equipment creditors. It is the intention and agreement of the parties that, if Glendenning elects to exercise his right to purchase, and if, at that time, the aforesaid obligations now existing against said equipment, or renewals thereof, are not paid in full, said Glendenning shall, upon the effective date of the order of approval of the purchase by the Commission, assume and pay the balances of the present obligations, or their renewals, then existing against each of said units of equipment. The sum so paid by Glendenning to said secured creditors shall be deducted from the purchase price set forth above, together with other deductions herein provided. [fol. 72] Glendenning may, in satisfaction of this promise, arrange to continue then existing periodic payments thereon, or may refinance any or all of them, but, in such case, Glendenning shall furnish Styer with a complete release and satisfaction of any personal liability to said creditors, and the furnishing of such release shall constitute a compliance with the above provision of the agreement. No deductions shall be made for interest unearned at the time of the effective date of the Commission's order of approval of said purchase.

c. Prior hereto, Styer executed his note to Clarence Styer for Six Thousand and no/100 (6,000.00) Dollars, and also executed an assignment of all of his right, title and interest in and to the rights, privileges and franchises owned by

Styer at the time of the execution thereof; that said note requires monthly payments beginning on December 1, 1943, at Two Hundred and no/100 (200.00) Dollars per month. In the event of purchase by Glendenning and the approval by the Commission, Glendenning agrees to pay the principal sum of such obligation (\$6,000.00), or any part thereof remaining unpaid at the time of said approval on or before the effective date of the order of approval, or, at its option, may pay said obligation in accordance with the terms of the aforesaid note, all as Glendenning shall then determine. In either case, the balance thereon remaining unpaid, including interest, at the time of the effective date of the Commission's approval of the purchase shall then be deducted from the purchase price provided above, together with other deductions.

The balance remaining due (after the above deductions) shall be paid by Glendenning in the manner and in the [fol. 73] amounts as follows:

Five Hundred and no/100 (500.00) Dollars on the 10th day of the first month following the approval of said purchase by the Interstate Commerce Commission, and a like sum on the 10th day of each and every month thereafter until said balance is paid in full. Interest at the rate of 3% shall be paid upon balances remaining unpaid from time to time.

In the event Glendenning elects to pay Styer's obligation to Clarence Styer, described in paragraph 9-c above, according to the terms of Styer's existing note, and pays to Clarence Styer the sum of Two Hundred and no/100 (200.00) Dollars per month, as therein provided, the amount of the monthly payment provided immediately above (\$500.00) shall be reduced to Three Hundred (300.00) Dollars, and monthly payments in such sum (\$300.00) shall be made to Styer by Glendenning when Glendenning makes monthly payments to Clarence Styer in the sum of Two Hundred and no/100 (200.00) Dollars. It is the intention of the parties that the content of this paragraph shall not affect Glendenning's right of deduction from the total purchase price as set forth in paragraph 9-c above.

For the purpose of providing for security to Styer for the unpaid balance, Glendenning agrees that he will then assign the rights, privileges and franchises here leased (and then purchased) by him to Styer, and that said assignment

shall become effective upon the effective date of the aforesaid order of approval and shall continue until the balance remaining due shall have been reduced to the sum of Ten Thousand and no/100 (10,000.00) Dollars. After said balance remaining unpaid shall have been reduced to Ten Thousand and no/100 (10,000.00) Dollars, or less, said [fol. 74] Glendenning may, at its option, cancel said assignment for security purposes, and, in lieu thereof, substitute other collateral security upon motor carrier equipment of an appraised value of 125% of the balance then remaining unpaid, or may, at his option, furnish other security acceptable to Styer. If Glendenning makes his option to purchase effective at the termination of the year period of this lease, it shall cause written notice of the intention to exercise such option to be given to Styer at least thirty days prior to the expiration date of said lease.

Wherever herein notice or other communication with Styer is required, the mailing thereof at his address last known to Glendenning, or to a nominee previously appointed by Styer therefor, shall be deemed a sufficient compliance therewith.

Styer hereby warrants that the equipment described in Exhibit II is not encumbered except as heretofore disclosed by him to Glendenning, and that the rights, privileges and franchises described in Exhibit I are not encumbered except as stated in Paragraph 9-c above.

d. If the Interstate Commerce Commission approves the purpose but conditions such approval upon a sale price lower than herein agreed upon, Styer agrees to accept such lower price as fixed by the Commission. If the Commission should approve the purchase transaction at a higher price, Glendenning agrees to pay the same.

10. For the consideration hereinbefore set forth, said Styer hereby agrees that, while this lease is in effect, and, if Glendenning exercises the above mentioned option to [fol. 75] purchase, for a period of five years after the effective date of the order of the Commission approving said purchase, he will not individually, or as a partner with others, engage, directly or indirectly, in the transportation of property for hire, except petroleum products, in interstate or intrastate commerce as a common or contract carrier, broker or freight forwarder, or by air, and that

he will not, directly or indirectly, become a stockholder, officer or director, or become beneficially or financially interested in a corporation, trust, association, cooperative association or other venture engaged in or to engage in one or more of the above described businesses in direct competition with Glendenning at any point upon his (Styer's) presently authorized routes, or at any point within his presently authorized territory—all as described in the certificates and orders of the Interstate Commerce Commission set forth in Exhibit I.

Styer further agrees that he will not, for the period of this lease, and, in the event Glendenning exercises the option to purchase, for an additional five years following the date of the order of approval of the Interstate Commerce Commission, become employed by any carrier directly competing with Glendenning at any of the points on Styer's presently authorized routes, or at any of the points within the territory presently authorized to Styer by the Interstate Commerce Commission—all as appears in Exhibit I attached hereto.

Each of the parties hereto acknowledge that the restrictions above set forth as to points, territory, and time, are [fol. 76] in the motor carrier business reasonable and proper.

The provisions of this agreement shall be binding upon the heirs, administrators, executors, successors and assigns of the parties hereto.

Northern Transportation Company, by Cornelius William Styer, Lessor; Glendenning Motorways Inc., by William Gordon Glendenning, Lessee.

[fol: 77]

EXHIBIT I TO AGREEMENT

Summary of Authorities Leased

1. MC-47644 (including Sub. 1), dated July 11, 1942, authorizing the following operations:

"General commodities, except those of unusual value and except dangerous explosives, commodities in bulk, and those requiring special equipment, over regular routes,

Between St. Paul, Minn., and Mitchell, S. Dak.:

From St. Paul over city streets to Minneapolis, Minn., thence over U. S. Highway 212 to Glencoe, Minn., thence over Minnesota Highway 22 to Gaylord, Minn., thence over Minnesota Highway 19 to Winthrop, Minn., thence over Minnesota Highway 15 to New Ulm, Minn., thence over U. S. Highway 14 via Brookings, S. Dak., to Huron, S. Dak., and thence over South Dakota Highway 37 to Mitchell;

From St. Paul to Minneapolis as specified above, thence over U. S. Highway 169 to Mankato, Minn., thence over Minnesota Highway 60 to Madelia, Minn., thence over Minnesota Highway 15 to Fairmont, Minn., and thence over U. S. Highway 16, via Sioux Falls, S. Dak., to Mitchell; and

Return over these routes to St. Paul.

Service is authorized to and from the off-route point of South St. Paul, Minn.

Between Winthrop, Minn., and Brookings, S. Dak.:

From Winthrop over Minnesota Highway 19 to the Minnesota-South Dakota State line, thence over un-numbered highway, via White, S. Dak., to junction U. S. Highway 77, and thence over U. S. Highway 77 to Brookings; and return over the same route.

Between Brookings, S. Dak., and junction South Dakota Highways 34 and 37;

From Brookings over U. S. Highway 77 to junction South Dakota Highway 34, thence over South Dakota Highway 34, via Howard, S. Dak., to junction South Dakota Highway 37; and return over the same route.

Between Arlington, S. Dak., and junction South Dakota Highway 37 and U. S. Highway 16:

[fol. 78] From Arlington over U. S. Highway 81 to Salem, S. Dak., thence over South Dakota Highway 38 to junction U. S. Highway 16; and return over the same route.

Between Sioux Falls, S. Dak., and junction U. S. Highway 77 and South Dakota Highway 34:

From Sioux Falls over U. S. Highway 77 to junction South Dakota Highway 34, near Colman, S. Dak.; and return over the same route.

Between Stanley Corners, S. Dak., and Yankton, S. Dak.:

From Stanley Corners over U. S. Highway 81 to Yankton, and return over the same route.

Between Vermillion, S. Dak., and Pumpkin Center, S. Dak.:

From Vermillion over South Dakota Highway 19 to Pumpkin Center; and return over the same route.

Between Sioux Falls, S. Dak., and Vermillion, S. Dak.:

From Sioux Falls, S. Dak., over U. S. Highway 77 to junction South Dakota Highway 50, thence over South Dakota Highway 50 to Vermillion; and return over the same route.

Service is authorized to and from all intermediate points on the above-specified routes, except Beresford, S. Dak."

2. MC-47644 Sub. 2, dated August 15, 1942, authorizing the following operations:

"General commodities, except dangerous explosives and except household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, commodities in bulk, and those requiring special equipment,

Between Minneapolis, St. Paul, South St. Paul, Invergrove, West St. Paul, Newport, North St. Paul, Columbia Heights, Robbinsdale, St. Louis Park, Hopkins, Edina, Richfield, Red Rock, McCarron Lake, Fort Snelling, and State Fair Grounds, Minn."

3. MC-47644 Sub. 3 (including Sub. Nos. 4, 5, 6 and 9), dated June 9, 1942, authorizing the following operations:

"REGULAR ROUTES:

General commodities, except those of unusual value, and [fol. 79] except dangerous explosives, household goods as defined in *Practices of Motor Common Carriers of*

Household Goods, 17 M.C.C. 467, commodities in bulk commodities requiring special equipment and those injurious or contaminating to other lading, over regular routes,

Between Huron, S. Dak., and Fort Thompson, S. Dak.:

From Huron over South Dakota Highway 37 to junction South Dakota Highway 34, thence over South Dakota Highway 34 to junction South Dakota Highway 45, thence over South Dakota Highway 45 via Genn valley, S. Dak., to junction unnumbered highway thence over unnumbered highway to junction South Dakota Highway 47, and thence over South Dakota Highway 47 to Fort Thompson, and return over the same route.

Service is authorized to and from the intermediate points of Woonsocket, Wessington Springs, Gannvalley, and Shelby Store, S. Dak.; and the off-route points of Virgil and Alpena, S. Dak.

Between Mitchell, S. Dak., and Lane, S. Dak.:

From Mitchell over South Dakota Highway 37 to junction unnumbered highway, thence over unnumbered highway via Letcher and Cuthbert, S. Dak., to Forestburg, S. Dak., thence over South Dakota Highway 34 to Woonsocket, S. Dak., and thence over unnumbered highway via Alpena, S. Dak., to Lane, and return over the same route.

Service is authorized to and from the intermediate points of Letcher, Cuthbert, Forestburg, and Alpena, S. Dak.

Between Newcastle, Nebr., and Sioux City, Iowa:

From Newcastle over Nebraska Highway 12 to junction U. S. Highway 20, thence over U. S. Highway 20 to Sioux City, and return over the same route.

Service is authorized to and from all intermediate and off-route points in Nebraska within 20 miles of Newcastle.

Between Newcastle, Nebr., and Yankton, S. Dak.:

From Newcastle over Nebraska Highway 12 to junction Nebraska Highway 15, thence over Nebraska High-

way 15 to junction U. S. Highway 81, and thence over U. S. Highway 81 to Yankton, and return over the same route.

Service is authorized to and from all intermediate and off-route points in Nebraska within 20 miles of Newcastle.

[fol. 80] *General commodities*, except those of unusual value, and except dangerous explosives, and commodities in bulk:

Between Sioux City, Iowa, and Parkston, S. Dak.:

From Sioux City, Iowa, over U. S. Highway 77 to junction South Dakota Highway 50, thence over South Dakota Highway 50 to junction South Dakota Highway 37, and thence over South Dakota Highway 37 to Parkston, and return over the same route.

Service is authorized to and from the off-route points of Armour, Corsica, Delmont, and Stickney, S. Dak.

Service is not authorized to and from intermediate points.

IRREGULAR ROUTES:

Livestock,

From farms within 15 miles of Parkston, S. Dak., to Sioux City, Iowa, with no transportation for compensation on return, except as otherwise authorized."

4. MC-47644, Sub. 7. Application for Certificate of Public Convenience and Necessity, Form BMC-74, for authorization to transport general commodities in the State of South Dakota, serving Vermillion and Yankton, South Dakota as intermediate points, in connection with Styer's presently authorized regular route authority between Sioux City, Iowa and Parkston, South Dakota. Application heard June 23, 1942, and now pending.

5. MC-47644, Sub. 11 TA. Temporary authority to operate between Vermillion and Yankton, South Dakota, dated July 21, 1942.

6. MC-47644, Sub. 13 TA. Request for temporary authority to operate between Worthington, Minn. and Sioux

City, Iowa direct. Received at Washington June 17, 1942. Still pending before the Commission.

7. MC-47644, Sub. 14 TA, dated July 14, 1942. Temporary authority until December 31, 1944, to operate over [fol. 81] the following routes:

"Between Minneapolis, Minn., and the Gopher Ordnance Plant located at Rosemount, Minn.:

From Minneapolis over U. S. Highway 52 to junction Minnesota Highway 218, thence over Minnesota Highway 218 to the site of the Gopher Ordnance Plant, and return over the same route.

Between St. Paul, Minn., and the Gopher Ordnance Plant located at Rosemount, Minn.:

From St. Paul over Minnesota Highway 218 to site of the Gopher Ordnance Plant, and return over the same route.

Service is not authorized at intermediate points on the above-specified routes."

8. MC-47644, Sub. 15 TA, received at Washington June 17, 1942. Request for temporary authority to operate between Madelia, Minn. and Worthington, Minn. over Highway 15 to junction with Minnesota Highway 60; thence via Minnesota Highway 60 to Worthington, and return over the same route. Still pending.

9. MC-47644, Sub. 16 TA, received at Washington June 17, 1942. Request for temporary authority to operate between Sioux Falls, S. D. and Marshall, Minn. via South Dakota Highway 11 to junction with Minn. Highway 39; thence via Minn. Highway 39 to Marshall, and return over the same route. Still pending.

10. MC-47644, Sub. 17 TA, received at Washington June 17, 1942. Request for temporary authority to operate:

1. Between Ivanhoe, Minn. and Lake Benton, Minn. over U. S. Highway 75
2. Between Marshall, Minn. and junction of U. S. Highway 59 with U. S. Highway 14 at Garvin Corner, Minn., U. S. Highway 59.

3. Between Redwood Falls, Minn. and junction of U. S. Highway 71 with U. S. 14 at Sanborn Corner, Minn., via U. S. Highway 71.

[fol. 82] 4. Between New Ulm, Minn. and Madelia, Minn., via Minnesota Highway 15.

5. Between New Ulm, Minn. and Mankato, Minn. via U. S. Highway 14.

This application still pending.

11. MC-47644, Sub. 18 TA, received at Washington September 16, 1942, requesting temporary authority for general commodities, with the usual exceptions, between Minneapolis and St. Paul on the one hand, and the Twin Cities Ordnance Plant in Moundsview Township, Ramsey County on the other hand. Still pending.

And all other rights, privileges, certificates or franchises, permits or licenses issued by or under the authority of the Interstate Commerce Commission and the States of Minnesota, South Dakota and Nebraska to said Styer, whether specifically described herein or not.

[fol. 83]

EXHIBIT I (b) TO AGREEMENT

South Dakota Authorities

Class A. Motor Carrier Certificate No. 74, covering transportation of property between fixed termini and over the regular route within the State of South Dakota, designated as follows:

Between Mitchell, Loomis, Letcher, Cuthbert, Forestburg, Woonsocket, Wessington Springs, Lane, Alpena, upon the time schedule and at the rates on file with the Commission.

Class A Motor Carrier Certificate No. 688, covering transportation of property between fixed termini and over the regular route within the State of South Dakota, designated as follows:

To, from and between Mitchell, Artesian, Fedora, Roswell, Vilas, Howard, Winfred, Canova, Unityville, Salem, Spencer, Epiphany, Farmer, Fulton, upon the time schedule and at the rates on file with the Commission.

Class A. Motor Carrier Certificate No. 36, covering transportation of property between fixed termini and over the regular route within the State of South Dakota, designated as follows:

Between Huron, Fort Thompson, Vilas, Virgil, Alpena, Woonsocket, Wessington Springs; Lane, Gannvalley, Shelby Store, upon the time schedule and at the rates on file with the Commission.

Nebraska Authority

No. N6694, authorizing general commodity operation over irregular routes from Newcastle, Nebraska, and within an 18 mile radius thereof to and from Laurel and Willis and occasionally to and from Herman, Emerson, Wakefield, Hartington, Dixon, Omaha, Norfolk, Oakland, and York.

[fol. 84]

EXHIBIT II TO AGREEMENT

Equipment, Including Tires and Tubes

Year	Make	Description	Sale price as of Oct. 1 1942	Rental charge per month
1941	International Tractor	Serial No. 26535 Motor No. GRD 233-35104	\$1861.45	\$41.26
1941	International Tractor	Serial No. 2020 Motor No. FAC 259-7204	2142.16	49.54
1941	International Tractor	Serial No. 2013 Motor No. FAC 259-7134	2142.16	49.54
1941	International Tractor	Serial No. K85-4588 Motor No. 233-22172	1526.35	35.30
1941	International Tractor	Serial No. K85-26535 Motor No. GRD 23335104	1572.54	34.85
1941	G.M.C. Tractor	Serial No. ACR 522524 Motor No. 3083662	2670.51	61.67
1941	Highway Semi-Trailer	Serial No. 47673	2746.52	35.21
1941	Highway Semi-Trailer	Serial No. 48304	2779.62	35.21
1941	Highway Semi-Trailer	Serial No. 47692	2986.92	38.74
1941	Highway Semi-Trailer	Serial No. 47691	2986.92	38.74
1941	Highway Semi-Trailer	Serial No. I-57	2512.45	34.26
1940	Brown Mono-Trailer	Serial No. 3877	4035.00	64.05
1939	Trailmobile Semi-Trailer	Serial No. 21466	1904.25	36.15
1937	Trailmobile Semi-Trailer	Serial No. 20317	1505.46	34.05
1936	Trailmobile Semi-Trailer	Serial No. 18150	725.87	32.40
1940	Thermo King Mechanical Refr. Unit	(Underslung type)	1099.60	39.00
1941	Thermo King Mechanical Refr. Unit	(Overhead type)	888.92	27.81
1941	Thermo King Mechanical Refr. Unit	(Overhead type)	888.92	27.81
1941	Thermo King Mechanical Refr. Unit	(Overhead type)	836.64	27.81
1940	Ford passenger coach	Motor No. 18-5369985	775.50	22.50
1940	Ford passenger coach	Motor No. 18-556897	775.50	22.50

Year	Make	Description	Sale price as of Oct. 1 1942	Rental charge per month
[fol. 85]				
1937	Dodge Truck	Motor No. T-40-2480	488.93	16.25
1935	G.M.G. Truck	Motor No. 12215399	352.50	7.50
1939	International Truck	Motor No. FAB 24123581 Serial No. DS-35-6523	1635.60	60.00
1939	Ford Truck	Motor No. 99T47085	740.18	17.51
1939	Ford Truck	Motor No. 99T45972	740.18	17.51
1938	Ford Truck	Motor No. BB18-4247574	655.65	22.50
1932	Reo Truck	Motor No. CF16676	246.50	5.46
1939	International Truck	Motor No. ED 23263422 Serial No. DS-30-6814	810.74	18.75
1937	Dodge Truck	Motor No. T 4115241 Serial No. 8418770	488.92	16.25
1940	Mack Tractor	Motor No. FKD 1379 Serial No. EG4D-1105	1692.00	37.50
1938	Mack Tractor	Motor No. EKD 1064 Serial No. EGIDH-1133	1692.00	37.50
1937	Mack Tractor	Motor No. BG 4647 Serial No. 6EHISD1015	1128.00	22.50
1936	Mack Tractor	Motor No. BG 5246 Serial No. 6EHISD1360	1128.00	22.50
5 sets of Elston Sanders			322.92	7.50
			<u>\$51,485.57</u>	<u>\$1097.63</u>

*Styer's book value of the above equipment, less depreciation, is the sum of \$41,894.73 (as appears in balance sheet dated August 31, 1942). One of said trucks, and one tractor, have been wholly depreciated.

[fol. 86]

EXHIBIT "A-1" TO ANSWER

Agreement

Made this 5th day of October, 1942, by and between Glendenning Motorways, Inc., a Minnesota corporation, St. Paul, Minnesota, hereinafter called "Glendenning", and Cornelius William Styer, doing business as Northern Transportation Company, St. Paul, Minnesota, hereinafter called "Styer".

WHEREAS the parties hereto, on September 22, 1942, entered into an Agreement of Lease, relating to the leasing by Styer of the properties and rights and privileges described therein to Glendenning, including an option in Glendenning to purchase the same; and that shortly thereafter the parties made a joint application for the approval of said lease transaction by the Interstate Commerce Commission, and also applied jointly for the Commission's approval of their application for temporary authority in Glendenning to operate the aforesaid property and privileges, and

WHEREAS said Commission, during its consideration of said applications has advised the parties that, for the purposes of the application and granting of such temporary authority, the parties must file a separate lease covering the period of 180 days, or to amend the existing lease so as to include a 180 day period, all in accordance with the regulations of the Commission.

[fol. 87] Now, THEREFORE, it is agreed as follows:

I

Said Styer hereby leases and lets unto Glendenning, and Glendenning hereby leases and lets from Styer all of the tangible personal property set forth in the schedule marked Exhibit 2 and attached to the lease of September 22, 1942, and the rights, privileges and franchises set forth in Exhibit 1 attached to said lease, for the period beginning with the effective date of the order of the Interstate Commerce Commission granting the parties' request for temporary authority in Glendenning to operate said property, and continuing until the effective date of the Commission's order finally determining the parties' application for the approval of said lease dated September 22, 1942. In the event, however, said Commission shall not have determined the parties' aforesaid application for the approval of the lease dated September 22, 1942 prior to 180 days from and after the effective date of the order granting temporary authority, then, and in that event, this lease shall continue for 180 days after the effective date of such temporary authority order.

II

It is agreed that, unless said Commission grants temporary authority [fol. 88] in Glendenning to operate the aforesaid properties and privileges, this lease shall be null and void, and of no effect.

III

Glendenning shall pay Styer for the use and rental of the properties and privileges involved herein the sum of \$1,397.03 per month being the total of the rentals set forth in paragraphs II-a and II-b of the Agreement of Lease dated September 22, 1942. The first and succeeding

payments of such rental shall be made at the time provided in said paragraphs II-a and II-b of the aforesaid lease.

IV

If, prior to the expiration of either of the periods set forth in paragraph I above, Glendenning shall exercise his option to purchase as set forth in the aforesaid lease of September 22, 1942, and if the Commission approves of said purchase prior to the expiration of either of said periods, then this lease shall terminate as of the effective date of the order of the Commission approving such purchase transaction.

V

The parties expressly agree that the aforesaid lease of September 22, 1942 shall be, and it is hereby incorporated herein by reference, and with the same force and effect as if specifically included herein, and that each and [fol. 89] all of the terms, conditions, promises and agreements of said lease shall be and remain in full force and effect, except insofar as repugnant to the provisions of this instrument.

Glendenning Motorways, Inc., by William Gordon
Glendenning, Pres.

In the Presence of: Perry R. Moore, Louis H. Joss.

Northern Transportation Company, by Cornelius
William Styer.

In the Presence of: Perry R. Moore, Louis H. Joss.

[fol. 90]

EXHIBIT "A-2" TO ANSWER

October 23, 1942

Mr. Cornelius William Styer
2654 University Avenue
St. Paul, Minnesota

Dear Sir:

You are hereby notified that the undersigned Glendenning Motorways, Inc. hereby elects to exercise its option to purchase the properties, privileges and franchises described in the agreement of lease of September 22, 1942,

and the amendment thereto of October 5, 1942, according to the terms and conditions set forth in said agreements, and in accordance with the option granted therein.

As you know, the purchase can not become effective until it is approved by the Interstate Commerce Commission. Application for such approval, in the form of a supplemental petition to the Form BMC-44 already on file, is being prepared and will be shortly filed with the Commission.

Very truly yours, Glendenning Motorways, Inc., by

[fol. 91]

EXHIBIT "B" TO ANSWER

ORDER

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 13th day of October, A. D. 1942.

No. MC-F-1981

Glendenning Motorways, Inc.—Lease—Cornelius William Styer

It appearing, That by application filed October 1, 1942, authority is sought under Section 5, Interstate Commerce Act as amended, by Glendenning Motorways, Inc., herein called lessee, of St. Paul, Minn., to lease motor-carrier properties of Cornelius William Styer, doing business as Northern Transportation Company, herein called lessor, also of St. Paul, and, by separate application, approval is sought under section 210a(b), of the temporary operation of said properties:

It further appearing, That failure to grant such temporary approval may result in destruction of or injury to said properties, or interfere substantially with their future usefulness in the performance of adequate and continuous service to the public:

It is ordered, That said application under section 210 a (b) be, and it is hereby, granted, and that lessee be, and it is hereby, authorized to lease rights of lessor under MC-47644 and MC-47644 (Sub-Nos. 2, 3, 11TA, and 14 TA) and other properties of lessor for a period not exceeding 180 days

beginning with the date hereof, unless otherwise ordered, upon terms and conditions mutually agreeable to the parties but at a total rental not exceeding \$1,400 per month.

It is further ordered, That this order shall be of no force and effect unless, within 15 days from the date hereof, lessee shall have:

- (1) Filed with the Commission three conformed copies of a lease agreement embracing the terms of the lease herein authorized,
- (2) Complied with sections 215 and 217 of the act and rules and regulations prescribed thereunder,
- (3) Instituted operations pursuant to this order, and
- (4) Confirmed, in writing, to the Commission, immediately upon commencement of operations, the date operations were commenced.

It is further ordered, That operations under the authority herein granted shall not prejudice such rights as lessor may have to appropriate operating authority issued or issuable under the act.

It is further ordered, That nothing herein contained shall be construed as a determination of the rights of any person or persons under any section of the act, except section 210a thereof as expressly determined herein, or as creating a presumption as to the action which may be taken on said application under section 5.

By the Commission, division 4.

W. P. Bartel, Secretary.

Endorsed: February 16th, 1943. Thomas H. Howard,
Clerk; Chell M. Smith, Chief Deputy. (Seal.)

Due service of the within answer by copy is hereby admitted this 25th day of November 1942. Warren Newcome, one of the attorneys for the plaintiff.

[File endorsement omitted.]

{fol. 92] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ANSWER OF INTERVENOR, GLENDENNING MOTORWAYS, INC.—
Filed Dec. 14, 1942

Now comes Glendenning Motorways, Inc., by its attorney, and for its answer to the complaint herein:

I

Alleges that Glendenning Motorways, Inc. is a corporation duly organized under and by virtue of the laws of the State of Minnesota; with its principal place of business in the City of St. Paul, State of Minnesota.

II

Admits the allegations of the complaint as set forth in [fol. 93] paragraphs I, II, III, IV, V, VI, VII, VIII, IX and X.

III

As to the allegations set forth in paragraphs XI, XII and XIII of the complaint, this defendant denies the same and each and every part thereof.

IV

As a further defense to said action this defendant intervenor shows to the Court that at all times mentioned in said complaint, and for many years prior thereto, this intervening defendant has carried on operations as a common carrier of property by motor vehicles, serving considerable territory within the States of Minnesota and Wisconsin and surrounding areas upon routes duly authorized by the Interstate Commerce Commission.

V

That subsequent to the 11th day of July, 1942, the said intervening defendant commenced negotiations with the defendant, Cornelius W. Styer, for the acquisition of certain interstate operating rights, privileges and franchises held by said Cornelius W. Styer for which Cornelius W.

Styer had received a Certificate of Public Convenience and Necessity duly issued by the Interstate Commerce Commission under date of July 11, 1942, and this Intervening Defendant, relying upon said Certificate of Public Convenience and Necessity, issued by the Interstate Commerce Commission, and knowing that said Certificate of Public Convenience and Necessity had been issued pursuant to an order of Interstate Commerce Commission dated the 24th day of October, 1941, and that certain interested parties, including plaintiffs herein, had filed a Petition for reconsideration of said order of the Interstate Commerce Commission dated October 24, 1941, and the same had been denied, and that said plaintiffs had taken no proceedings in the courts to contest said Order of October 24, 1941, and said Plaintiffs stood by and took no steps to restrain the Commission from issuing said Certificate of Public Convenience and Necessity under date of July 11, 1942; did enter into a contract with said Cornelius W. Styer, and on September 22, 1942, did sign, seal and deliver a contract to lease the rights, privileges and franchises of said Cornelius W. Styer, together with certain equipment as is [fol. 94] more specifically set forth in Exhibit A hereto attached; That thereafter, and on October 5, 1942, said contract of September 22, 1942, was modified as shown in Exhibit "A-1" herewith attached, and that on October 23, 1942, this Intervening Defendant did exercise the option given to this defendant in the contract of September 22, 1942, which is hereto attached and marked Exhibit "A-2".

VI

That on October 1, 1942, Defendant, Styer, and Glendenning Motorways, Inc., Intervener, filed an application with the Interstate Commerce Commission under Section 210, Part 2, with Interstate Commerce Commission Act, as amended, requesting temporary authority in Glendenning Motorways, Inc. for the operation of the properties described in said agreement of lease dated September 22d, 1942, and on October 13th, 1942, said order for temporary authority was issued, a copy thereof being attached hereto and marked *Exhibit "B"*; and that said Glendenning Motorways, Inc., pursuant thereto, now operates all the properties and privileges of this defendant Styer.

VII

That upon the exercise of said option by Glendenning Motorways, Inc. to purchase said property of said Styer on or about the 23rd day of October, 1942, said Styer and said Glendenning Motorways, Inc. amended their then pending application to the Interstate Commerce Commission to approve the one year lease provided for in said Exhibit "A" so as to request the order of the Commission approving the purchase of the rights and privileges described therein for an agreed price of \$66,485.57; that said Commission set the amended application for hearing on October 31st, 1942, and on said date said hearing was held thereon at Minneapolis, Minnesota; that on the morning of said hearing the purchaser, Glendenning Motorways, Inc., although not named as a party to this action, received a copy of the complaint from the plaintiffs herein, although said complaint was not served upon defendant Styer until two days later; that prior to the receipt of said complaint by said Glendenning Motorways, Inc. this defendant had not been advised nor had any means of knowing that this [fol. 95] proceeding would be instituted by the plaintiffs herein.

VIII

That this intervening defendant, because of said failure of said plaintiffs to proceed promptly in securing a review by this Court of said action of the Interstate Commerce Commission, believed that no such proceeding would be commenced, and, relying thereon, on September 22d, 1942, did enter into a contract with the defendant, Cornelius W. Styer, to purchase the rights, privileges and franchises granted by Order of October 24th, 1941, included in said contract; that said intervening defendant has very materially changed its position, in that it has coordinated the operation of the lines of said Styer with its own operation and has expended considerable sums in the development and coordination of said business of Styer with this intervening defendant, and by entering into commitments with Cornelius W. Styer for the payment of substantial sums of money and the purchase of substantial equipment, as shown by the exhibits, all of which are matters affecting general business situation and did materially affect this intervening defendant; and that an extended review and

delay in determining the rights of the defendant will cause an irreparable loss to this defendant.

IX

That by their laches plaintiffs have waived any rights they may have had to have a review of the action of the Interstate Commerce Commission after said Commission, with due notice to all parties and a hearing thereon, has granted the certificate of public convenience and necessity to Cornelius W. Styer, and said plaintiffs are now estopped from prosecuting this action as a matter of equity.

WHEREFORE, Defendant prays:

(1) That the action of the Interstate Commerce Commission in issuing its Order of October 24th, 1941, in the issuance of certificate of public convenience and necessity pursuant thereto, on July 11th, 1942, be in all things sustained.

(2) That the action herein be dismissed, and that the intervening defendant recover its costs.

Fred W. Putnam, Attorney for Intervening Defendant, 826 First National-Soo Line Bldg., Minneapolis, Minnesota.

(For exhibits to foregoing answer see side folios 61, 86, 90 and 91 ante)

[fol. 97] *Duly sworn to by Kenneth George Heimbach jurat omitted in printing.*

(File Endorsement Omitted)

[fol. 97a] IN THE UNITED STATES DISTRICT COURT

Civil Action No. 811.

CHICAGO, SAINT PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY, a Wisconsin corporation; GREAT NORTHERN RAILWAY COMPANY, a Minnesota corporation; Charles M. Thomson, as Trustee of the Property of CHICAGO & NORTH WESTERN RAILWAY COMPANY; Henry A. Scandrett, Walter J. Cummings and George I. Haight, as Trustees of the Property of the CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILWAY COMPANY; and L. C. Sprague, Receiver of MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY,

Plaintiffs,

vs.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE COMMISSION; and CORNELIUS W. STYER, doing business as NORTHERN TRANSPORTATION COMPANY,

Defendants,

and

GLENDENNING MOTORWAYS, INC.,

Intervening Defendant.

DECISION—June 12, 1943

Mr. Warren Newcome, Mr. Amos Mathews, and Mr. Richard Musenbrock, for plaintiffs.

Mr. Robert L. Pierce, Special Assistant to the Attorney General, for the United States.

Mr. Nelson Thomas, Attorney, Interstate Commerce Commission, for the Interstate Commerce Commission.

Mr. Perry R. Moore for defendant Cornelius W. Styer, doing business as Northern Transportation Company.

Mr. Fred W. Putnam for Glendenning Motorways, Inc., intervening defendant.

Before SANBORN, Circuit Judge, and JOYCE and SULLIVAN, District Judges.

[fol. 97b] SANBORN, Circuit Judge:

This action was brought by the plaintiffs, common carriers by railroad, to enjoin and set aside in part an order of the Interstate Commerce Commission dated October

24, 1941, granting a certificate of public convenience and necessity to Cornelius W. Styer as a motor carrier of property in interstate commerce over various routes. The action is authorized by Title 28, U. S. C. A., § 41 (28), § 44, § 47 and § 48. The plaintiffs are in a position to maintain the action as competitors of Styer and protestants before the Commission in the proceedings in which the order was entered. *Alton Railroad Co. v. United States*, 315 U. S. 15.

The plaintiffs assert that the portion of the Commission's order which they challenge and which conferred upon Styer the rights to receive and deliver freight at intermediate points in Minnesota on the routes designated by the Commission in its report as routes 1, 2 and 3, is without any evidentiary support and is in excess of the power of the Commission. The defendants and the intervener (which has acquired the business and operating rights of Styer) deny that the Commission's order is invalid in any respect, and assert that the plaintiffs' action is barred by laches.

The three routes referred to in this case extend from the Twin Cities (St. Paul and Minneapolis) in Minnesota to Huron and Mitchell in South Dakota, passing through many intermediate points in both states. The right to operate over routes 1 and 2 was granted by the Commission to Styer, in Docket No. MC-47644, under the "grandfather" clause of § 206 (a) of Part II of the Interstate Commerce Act [49 Stat. 543, 551; 54 Stat. 919, 923; 49 U. S. C. A. § 306 (a)], which provides:

[fol. 97c] " . . . if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time . . . the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation"

The right to operate over route 3 was granted in Docket No. MC-47644 (Sub-No. 1) under the provisions of § 207 (a) of the same Act [49 U. S. C. A. § 307 (a)], which requires a showing that the proposed operation "is or will be required by the present or future public convenience and necessity." The "grandfather" proceeding and the "pub-

lic convenience and necessity" proceeding were decided by the Commission in a single report and order.

This case has been submitted to this statutory court of three judges upon a certified transcript of the evidence adduced before the Commission and upon evidence bearing upon the question of laches.

The first contention of the plaintiffs is that "the Commission erred in finding that Styer was entitled to 'grandfather' rights to pick up or deliver freight at any point on the 'grandfather' routes authorized in Minnesota except St. Paul and Minneapolis."

The Commission, in the "grandfather" proceeding, authorized Styer to serve, in both directions, all points located on routes 1 and 2, finding that he was in bona fide operation as a common carrier by motor vehicle over those routes, serving all intermediate points, on June 1, 1935, and thereafter. Unless this finding of the Commission is wholly without support in the evidence, it is conclusive upon this court. We cannot concern ourselves with the question of the correctness of the finding; but only with the question of the power of the Commission to make it. The power [fol. 97d] to decide a question includes jurisdiction to decide it either correctly or incorrectly. *Pittsburgh Plate Glass Co. v. National Labor Relations Board*, 8 Cir., 113 F. 2d 698, 701. The plaintiffs contend that the finding is wholly without evidentiary support. They call attention to the following statement made by Styer's counsel at the "grandfather" hearing:

"Applicant does not seek any rights, grandfather rights, to transport goods moving in interstate commerce from any Minnesota point to any Minnesota point upon the routes described, but he does seek to transport from points in South Dakota on these routes to all points in Minnesota irregularly."

The plaintiffs also refer to the following testimony of Styer relative to his operations and the "grandfather" rights which he sought:

"I claim to have a regular operation and an irregular operation in Minnesota. The regular operation is over the routes shown on Exhibit 1. The irregular territory or routes are not indicated on this exhibit. I claim to have regular and irregular operations

of general commodities. The regular operation as indicated by the routes shown on this map are the routes over which our trucks go daily and that service is given. Those trucks go through those towns over those routes whether or not they have shipments for every town on every particular day. The irregular operation, for example, would be a shipment for Albert Lea where we would not go unless we had a shipment. In that nature it is irregular. The regular route operations are more or less on a fixed time schedule. That is the bulk of my operations. The irregular operation is only supplemental to our principal operation. It is principally for back haul out of South Dakota. The movement is unbalanced between the west bound and east bound freight and consequently the occasion arises for handling freight other than that destined to points on the regular routes, to attempt to balance the amount of freight moving, so that the trucks can more nearly move loaded in both directions. When I mention Albert Lea I don't know whether or not we have served that point. I mentioned that as an example.

"What we are asking for is a territory to which we offered service prior to June 1 and to which we have offered service up to the present date, over irregular routes on loads when available because there [fol. 97e] is no direct service to that point and there is a demand for service. We wanted it as a territory, to be operated in conjunction with our regular route operation. In other words our irregular operation is intended to take care of the movement mainly from South Dakota back into Minnesota. We are not asking for the right to transport commodities in interstate commerce from Minneapolis to Albert Lea. We are specifically restricting so as to not apply in interstate commerce between points in Minnesota. In short our operations from the Twin Cities to the South Dakota territory is chiefly our regular route operations.

"Originally we asked for territory in the entire State of Minnesota. We have now restricted that to a small territory in the southern and southwestern part of Minnesota."

It appears that the "grandfather" rights claimed by Styer in his testimony before the Commission were: (1) to transport freight from the Twin Cities to South Dakota points over regular routes, but not to Minnesota intermediate points or between such points; and (2) to transport freight from South Dakota points to all points in "a small territory in the southern and southwestern part of Minnesota" over irregular routes.

The evidence before the Commission showed that on June 1, 1935, Styer's transportation business was in its infancy; that he then had four transportation units; that his regular route operation was from the Twin Cities to South Dakota points; that he had actually rendered no service to or between intermediate Minnesota points on his routes; that his eastbound operation was to off-route points in Minnesota, but that he had served intermediate points in South Dakota on his regular routes. Styer testified, however:

"On and prior to June 1, 1935, I solicited business for intermediate points on the regular routes I operated over. I contacted personally quite a few shippers. . . . It was my purpose from the beginning to solicit and render service to the intermediate points."

While it seems probable that in this testimony Styer was [fol. 97f] referring to service from the Twin Cities to South Dakota intermediate points, since on and prior to June 1, 1935, his tariffs apparently covered no other intermediate points on his routes, we think the Commission was free to place its own interpretation upon his testimony as to the extent of service tendered.

The Commission in its report made the following statement:

"Prior to June 1, 1935 applicant served the intermediate points on routes 1, 2, 4, and 5 of Brookings, Iroquois, Forestburg, and Madison. Applicant does not claim the right to transport interstate shipments from the Twin Cities to points on his routes in Minnesota, but claims that such points were served eastbound from South Dakota. Although the proof of service at intermediate points on the above routes is not impressive, when considered in connection with

the fact that operations by applicant were instituted only 2 months prior to the statutory date and the testimony of applicant that he did not limit his service to terminal points but held out service at all intermediate points and actually solicited such business, we are convinced that he should be authorized to serve all intermediate points on routes 1, 2, 4, and 5, and that a restriction to serve certain intermediate points in one direction only would make the authority granted unnecessarily complicated and it will not be imposed."

This shows the basis for the Commission's including in the "grandfather" rights accorded to Styer authority to serve intermediate Minnesota points on routes 1 and 2.

The broad question which the Commission was required to determine in the "grandfather" proceeding was: What grant should be made to Styer under the "grandfather" clause of § 206 (a), in order to assure him a substantial parity between his future operations and his prior bona fide operations? See *United States v. Carolina Freight Carriers Corp.*, 315 U. S. 475, 481. The Commission was not compelled to limit Styer to the exact pattern of his operations prior to June 1, 1935, and, in determining the scope of his "grandfather" rights, it could take into consideration the service which he was offering, as well as that which had actually been performed by him, prior to that date. *United States v. Carolina Freight Carriers Corp.*, supra, pages 483-484. It is true that an applicant has the burden of establishing his right to the statutory grant contained in the "grandfather" clause (*Alton Railroad Co. v. United States*, 315 U. S. 15, 25), and that, since that clause "confers a special privilege, the proviso defining exemptions is to be held to extend only to carriers plainly within its terms. *McDonald v. Thompson*, 305 U. S. 263, 266." *Gregg Cartage & Storage Co. v. United States*, 316 U. S. 74, 83.

The "grandfather" clause of § 206 (a) contemplated that a common carrier by motor vehicle should retain the place in the national transportation system which he occupied on June 1, 1935, and that the rights granted him to continue operations without proof of public convenience and necessity should equal, but not exceed, the actual service being rendered by him on that date. As was said by Mr.

Justice Jackson in his dissenting opinion in *United States v. Carolina Freight Carriers Corp.*, 315 U. S. 475, 493:

"In trying to limit the injury caused by transition from a purely private interprise to a regulated public service industry, the general plan was to preserve to private owners the transportation values evidenced by actual conditions of operation on June 1, 1935, and to exempt them from meeting the requirements of 'public convenience and necessity' as to such operation. Those who obtained such 'grandfather' rights are not, however, limited to them. They may expand their territory or extend their service by proving that public convenience and necessity will be served thereby."

See, also, *McDonald v. Thompson*, 305 U. S. 263, 266; *Noble v. United States*, U. S. , opinion filed May 3, 1943; *Noble v. United States*, 45 F. Supp. 793, 800; *Crescent Ex-[fol. 97h] press Lines, Inc. v. United States*, 49 F. Supp. 92, 94-95. It must be true, however, that the Commission, in determining the nature and extent of the "grandfather" rights of a carrier in a particular case, is not required to do so with mathematical precision, and that, within reasonable bounds, its estimate of the character and scope of the carrier's bona fide operation on and prior to June 1, 1935, must be accepted by the courts, which cannot substitute their judgment for that of the Commission.

The Commission has, in effect, ruled in similar proceedings that proof of actual operations as a common carrier to and from termini and some intermediate points on a regular route, coupled with evidence of a holding out of service and of a willingness and ability to serve all points on the route whenever shipments are offered, will justify a finding of bona fide operation to and between all points on the route. See *Nevitt Common Carrier Application*, 4 M. C. C. 298, 299-300; *Consolidated Freight Lines, Inc., Common Carrier Application*, 11 M. C. C. 131, 136; *Knaus Common Carrier Application*, 20 M. C. C. 669, 671; *Los Angeles-Seattle Motor Express, Inc., Common Carrier Application*, 24 M. C. C. 141, 145; *Tarbet Common Carrier Application*, 31 M. C. C. 63, 66-67. In the instant case, it is apparent that the Commission regarded the proof of actual service between termini and to interme-

diate points in South Dakota, together with the evidence which tended to prove that Styer was offering and was able to serve intermediate points, whether in Minnesota or South Dakota, on the "grandfather" routes, as sufficient to justify the grant which it made to Styer. Proper deference must be paid to the Commission's interpretation [fol. 97i] of the law which it enforces, *Gregg Cartage & Storage Co. v. United States*, 316 U. S. 74, 88, and, if there is any warrant in the record for the judgment of the Commission, it must stand. *Rochester Telephone Corp. v. United States*, 307 U. S. 125, 145-146. We think that the Commission's determination that Styer was entitled to the rights granted because of his bona fide operations as a common carrier on and prior to June 1, 1935, did not amount to an abuse of power.

We do not agree with the contention of the defendants that § 208 (a) of the Act [49 U. S. C. A. § 308 (a)], which authorizes the Commission, in issuing a certificate of public convenience and necessity, to attach "at the time of issuance . . . to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require," confers power upon the Commission to expand the special privilege granted by the "grandfather" clause of § 206 (a) to those who were in actual operation as motor carriers on June 1, 1935. If, in the public interest, it is desirable that the rights to which such operators were entitled by virtue of § 206 (a) be expanded, the power granted to the Commission by § 207 (a) should be invoked to accomplish that result.

The Commission, in the "public convenience and necessity" proceeding, authorized Styer to serve all intermediate points on route 3, although he had, by amendment, withdrawn from his original application his request for authority to render "all service in interstate commerce between points in Minnesota." Sec. 207 (a) provides for the issuance of a certificate authorizing operations "covered by the application, if it is found that the applicant [fol. 97j] is fit, willing, and able properly to perform the service proposed . . . and that the proposed service . . . is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied."

The plaintiffs argue that Styer's amendment to his application was equivalent to an assertion that he was unwilling to serve intermediate points in Minnesota on route 3, and that it deprived the Commission of authority to grant him the right to serve such points. We think that this argument is too narrow and legalistic. The primary concern of the Commission with respect to operations over route 3 was the public interest and the furtherance of the transportation policy declared in the Act. We have no doubt that under § 207 (a) and § 208 (a), the Commission could condition its grant of operating rights over route 3 to meet its conception of what public convenience and necessity required of Styer. That Styer was not unwilling to accept the full grant of authority made by the Commission has since been demonstrated by his actual acceptance and use of it. In urging that Styer received greater operating rights than he asked for or was willing to accept, it seems to us that the plaintiffs are urging a grievance which is not theirs.

We find it unnecessary to consider the question of laches.

Our conclusion is that the plaintiffs are not entitled to the relief prayed for, and that their complaint must be dismissed. Findings of fact and conclusions of law, and a decree, in conformity with this opinion, are filed herewith.

[fol. 98] IN THE UNITED STATES DISTRICT COURT

Civil Action No. 811

CHICAGO, SAINT PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY, a Wisconsin Corporation; Great Northern Railway Company, a Minnesota Corporation; Charles M. Thomson, as Trustee of the Property of Chicago & Northwestern Railway Company; Henry A. Scandrett, Walter J. Cummings and George I. Haight, as Trustee of the Property of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, and L. C. Sprague, Receiver of Minneapolis & St. Louis Railroad Company, Plaintiffs,

vs.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE COMMISSION; and Cornelius W. Styer, Doing Business as Northern Transportation Company, Defendants;

and

GLENDENNING MOTORWAYS, INC., Intervening Defendant

Findings of Fact and Conclusions of Law.—Filed June 12, 1943

This cause was heard at Minneapolis, Minnesota, on February 23, 1943, by a statutory court consisting of John B. Sanborn, United States Circuit Judge, Matthew M. Joyce, United States District Judge, and George F. Sullivan, United States District Judge, upon the application of the plaintiffs to enjoin and to set aside so much of the order entered by the Interstate Commerce Commission on October 24, 1941, under § 206(a) and § 207(a) of Part II of the Interstate Commerce Act, as authorized the defendant Cornelius W. Styer to operate as a common carrier of commodities by motor vehicle to and from intermediate points [fol. 99] in Minnesota upon interstate routes designated by the Commission in its report and order as routes 1, 2 and 3. The cause was submitted to the court upon a certified transcript of the evidence and proceedings before the Commission, upon evidence relating to the issue of laches raised by the defendants, and upon oral argument and briefs. From the admissions of the parties and the evidence adduced, the

court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The order of the Interstate Commerce Commission referred to in the complaint herein was made and entered on October 24, 1941, in Docket No. MC-47644 and in Docket No. MC-47644 (Sub-No. 1), and grants to Cornelius W. Styer, as a common carrier of commodities by motor vehicle, upon applications filed by him, a certificate of convenience and necessity authorizing him to operate over interstate routes 1, 2 and 3 designated in the report and order of the Commission, and to serve all intermediate points in Minnesota and South Dakota upon those routes.

2. So much of the order as granted to Styer the right to operate over routes 1 and 2 was based upon the "grandfather" clause of § 206(a) of Part II of the Interstate Commerce Act (§ 306(a) of Title 49 U. S. C. A.).

3. So much of the order as granted Styer the right to operate over route 3 was based upon § 207(a) of said Act (§ 307(a) of Title 49 U. S. C. A.).

4. There was no evidence adduced before the Commission that prior to June 1, 1935, Styer had transported any commodities to or from intermediate points in Minnesota on routes 1 and 2. The evidence was that prior to that date [fol. 100] Styer had transported commodities from the Twin Cities (St. Paul and Minneapolis) in Minnesota to Huron and Mitchell in South Dakota over routes 1 and 2, had served intermediate points in South Dakota thereon, and had transported commodities from South Dakota points to points in Minnesota which were not on routes 1 and 2.

5. There was evidence before the Commission sufficient to justify the inference that prior to June 1, 1935, Styer was able to serve intermediate points in Minnesota on routes 1 and 2, and had held out service to such points.

6. The Commission found, in Docket No. MC-47644, that "on and continuously since June 1, 1935, applicant [Styer] was and has been in bona fide operation, in interstate or foreign commerce, as a common carrier by motor vehicle of general commodities . . . between the points and over routes 1 to 5, inclusive, described in the appendix hereto

[the appendix to the Commission's report], serving all intermediate points except those on route 3"

7. This finding of the Commission was not unsupported by evidence.

8. The Commission found, in Docket No. MC-47644 (Sub-No. 1) that "the present and future public convenience and necessity require operation by applicant [Styer], in interstate or foreign commerce, as a common carrier by motor vehicle, of general commodities, . . . serving . . . all intermediate points on route 3"

9. This finding of the Commission was not unsupported by evidence.

[fol. 101]

CONCLUSIONS OF LAW

1. This court has jurisdiction of the parties to this cause and of the subject matter thereof.

2. The findings of the Commission upon which that part of the order of October 24, 1941, which the plaintiffs seek to have enjoined and set aside, is based, are binding upon this court.

3. The plaintiffs are not entitled to the relief prayed for.

4. It is unnecessary to rule upon the question of laches.

5. The defendants are entitled to a dismissal of the complaint.

Dated June 12, 1943.

John B. Sanborn, United States Circuit Judge;
Matthew M. Joyce, United States District Judge.
George F. Sullivan, United States District Judge.

[File endorsement omitted.]

[fol. 102] IN THE UNITED STATES DISTRICT COURT

Civil Action No. 811

CHICAGO, SAINT PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY, a Wisconsin Corporation; Great Northern Railway Company, a Minnesota Corporation; Charles M. Thomson, as Trustee of the Property of Chicago & Northwestern Railway Company; Henry A. Scandrett, Walter J. Cummings and George I. Haight, as Trustees of the Property of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, and L. C. Sprague, Receiver of Minneapolis & St. Louis Railroad Company, Plaintiffs,

vs.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE COMMISSION; and Cornelius W. Styer, Doing Business as Northern Transportation Company, Defendants;

and

GLENDENNING MOTORWAYS, INC., Intervening Defendant

JUDGMENT AND DECREE—June 12, 1943

In conformity with the Findings of Fact and Conclusions of Law and the Decision of this court made and filed in this case, it is

Ordered, Adjudged and Decreed that the complaint herein be, and the same is, hereby dismissed.

Dated June 12, 1943.

John B. Sanborn, United States Circuit Judge;
Matthew M. Joyce, United States District Judge;
George F. Sullivan, United States District Judge.

[File endorsement omitted.]

[fol. 103] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

Statement of Evidence

Proceedings had and evidence taken in the above entitled case before the Honorable John B. Sanborn, Judge, United States Circuit Court of Appeals, the Honorable Matthew M. Joyce, and the Honorable George F. Sullivan, Judges,

United States District Court, District of Minnesota, at Minneapolis, Minnesota, on February 23, 1943.

APPEARANCES: MESSRS. Warren Newcome, Amos Mathews and Richard Musenbrock, appearing on behalf of plaintiffs;

Messrs. John Graff, Assistant United States Attorney, District of Minnesota; Robert L. Pierce, Special Assistant to the Attorney General of the United States, appearing for the United States of America, and Nelson Thomas, appearing for the Interstate Commerce Commission;

Perry R. Moore, appearing for the defendant Cornelius W. Styer, and Fred W. Putnam, appearing for the intervening defendant, Glendenning Motorways, Inc.

COLLOQUY

Mr. Newcome: " . . . I would like to have marked [fol. 104] and offer in evidence the transcript of the evidence before the two Joint Boards who originally heard the applications involved in this proceeding, together with the exhibits which were received in evidence, certified to by the Secretary of the Interstate Commerce Commission."

(The transcript and exhibits referred to were marked for identification as plaintiffs' Exhibit Number 1.)

Mr. Newcome: "Plaintiffs' Exhibit 1 is offered in evidence."

Mr. Thomas: " . . . the Commission makes no objection to any of these documents in view of their proper certification, except that we do object upon the grounds of irrelevancy and immateriality. I think there are two proposed reports, or recommended reports, of Joint Boards. The Commission objects to those papers as having no probative force or effect. If they are introduced merely to show the procedure and without any request that the court give them any legal weight, why we don't object to them. But we do object as to their being taken as having any legal force or effect."

Mr. Newcome: "I might point out that the two proposed reports to which counsel has referred are not a part of the record and are not included in Exhibit 1, but copies of those proposed reports are attached to the complaint in this action and admitted as being correct by the Government, as I understand it, in their answer."

Judge Sanborn: "Well, we will receive plaintiffs' Exhibit 1 for what it may be worth, subject to the objection that it is irrelevant."

Mr. Thomas: "And I would like for the record to show that the answers by the Government and the Commission, while admitting the issuance of these recommended reports by the respective Joint Boards, asserted then and there, that they were not of probative legal force or effect."

Mr. Moore: "Counsel, is this offered with the thought that the objections and exceptions taken on the part of both sides shall be preserved in this court?"

[fol. 105] Mr. Newcome: "It is offered Mr. Moore, as the record before the Commission and upon which the Commission's report and order are based, and necessarily is the foundation for whatever order was issued." (Tr. pp. 2, 3, 4.)

Witness CORNELIUS WILLIAM STYER, residence Minneapolis, Minnesota:

Direct examination:

Q. May I say to you, Mr. Styer, that we are going to be concerned in this testimony solely with the defense that we call laches as alleged in our Answer, and that we cannot get over into the field of past operations or matters that have been before the Commission.

I recall the issuance of the order of Division 5 on October 24, 1941. That was the first determination by the Division that I had had of the numerous issues that had been involved in previous litigation.

Prior to that time and prior to August 25, 1941, my line had had no access into Sioux City, Iowa. That is, the South Dakota points on my line which I served had no access into Sioux City. (Tr. pp. 5, 6.)

In order to get into Sioux City I bought a line from Mr. Isaac of Parkston, South Dakota, which ran from Parkston into Sioux City via Yankton and Vermillion, South Dakota. Mitchell is twenty miles directly north of Parkston on South Dakota Highway 37. At that time I was operating between Mitchell over South Dakota Highway 37 to Parkston. I had made a grandfather application for the right to operate over that highway. I paid Isaac \$1,100.00 for that route. In the Division 5 order of October 24, 1941, we were denied

the right to serve the route between Mitchell and Yankton over South Dakota Highways 37 and 50. The former highway goes through Parkston. That left a hiatus in my routes between Mitchell and Parkston and we had no service. Insofar as was concerned the Sioux City business it didn't leave us a common point to connect our South Dakota points with our Sioux City setup. Had this situation continued I could not have gone into Sioux City from any point except those points on the Parkston line that I had bought. (Tr. pp. 6, 7, 8)

I had negotiations with a man named Hammond for the right to operate from Sioux City to points in South Dakota by connection with certain existing routes. He had the right to operate between Sioux City and Yankton. Purchase [fol. 106] of Hammond's rights would again give me a common point on the Sioux City line connecting the points granted in the grandfather order so that we could again serve all the Northern Transportation territory from Sioux City. I arranged to purchase the rights from him. I cannot recall the exact date. Application to the Commissioner for approval of the purchase was made on the twenty-third of January or February, 1942. Hammond and I submitted our application to the Commission for approval of the purchase. I paid him as the purchase price \$500.00. Right around that time or between then and the first of April I was instructed by the local Interstate Commerce Commission office with reference to the continuation of those movements. I nevertheless continued to serve into Sioux City throughout the period and while the Hammond application was pending. The Commission granted the application for approval of purchase of the Hammond rights, effective on April 6th or probably March 31st, I am not sure. I went into operation with Commission approval between Sioux City and Yankton on or about March 31st. After the approval of the Hammond purchase and denial of the petition by the railroads for reconsideration by the full Commission I made certain moves toward the further development of the Sioux City traffic. (Tr. pp. 8, 9, 10.)

It was in the latter part of March or the first part of April that we made arrangements to establish a terminal in Sioux City. We moved one man from Brookings down there as a solicitor to contact the Sioux City shippers and a foreman. We sent a rate and tariff man out there to es-

establish the office at Sioux City. We made arrangements with the local dray line for a terminal and office setup and established a phone directory advertising in the name of Northern Transportation Company, and sent our South Dakota foreman to Sioux City to further aid in the establishment of that terminal. We rented space in the terminal for which we paid \$20.00 per month. We sent three men to Sioux City to develop the business, besides the drivers that were operating in and out of Sioux City. Gene McNally was local foreman and solicitor and received \$38.50 per week; Hoffman got \$45.00 a week and expenses. The [fol. 107] man in the office got \$25.00 per week and expenses. I invested approximately between two and three thousand dollars after April 6, 1942, in developing the Sioux City terminal. Also I made an effort to develop Minnesota points at that time. We gave new listings to the various routing guides and to our own routing guide here and got out cards showing the additional towns, showing a correction of the towns that were on our order as compared to the ones that we had shown prior to the time the order came out. (Tr. pp. 10, 11, 12)

On May 25, 1942, I borrowed \$6,000.00 from my brother to carry on the additional expansion that I was doing because of the rights that were conferred in the order. At that time I had advices that proceedings before the Commission with respect to my certificate and rights were terminated. I even consulted with the local I. C. C. office and they told me that was definitely final, and also from my legal advisor. I had not been advised by these railroads or anyone else that any action in court to review that order was contemplated and had no information that this case was going to be started. If I had had that information I would not have borrowed this money from my brother. The security I gave him for the loan was on the operating rights that were outlined in the certificate that I had received from the Commission and I told him that that was definite and final in my request for the money. (Tr. pp. 12, 13)

During May or June I had a conversation with Mr. Glendenning respecting the possibilities of the sale of my rights. On July 11, 1942, the date of the certificate, I got the certificate. After the receipt of the certificate I had a further conversation with Mr. Glendenning. As I recall

it I got a telephone call from him and he wanted a further conference on the purchase of the Northern lines and so we met at the Universal Cafe on University Avenue. He wanted to know the status of the rights and I told him I had just recently received my final certificate and that the rights were all in certificate form. I had a further conversation with him respecting the terms of a possible sale and we were meeting almost continuously from then on. The first conversation was sometime after [fol. 108] July 11th. As I recall it I would say it was around the latter part of July. There was a period when I was out of the city and I was in and out quite a bit. Upon my return I had further conferences and negotiations with Mr. Glendenning respecting the sale. We discussed the terms and different angles of the sale almost continuously from then on. The negotiations continued up until the latter part of September. (Tr. pp. 13, 14)

Exhibit A is an agreement entitled "Agreement of Lease", executed by myself and William Gordon Glendenning, President of the Glendenning Motorways, Incorporated. That is my signature and the agreement of lease is effective now.

Mr. Moore: "We offer defendants' Exhibit A."

Mr. Newcome: "Objected to as irrelevant, immaterial, self-serving and not binding on the plaintiffs."

Judge Sanborn: "It will be received subject to the objection." (Tr. pp. 14, 15)

Exhibit B is another paper entitled "Agreement", dated October 5, 1942. It is an agreement, conditional agreement or supplementary agreement that was made after the main agreement or lease was made and is a supplement thereto.

The sale price of my properties and equipment to Glendenning was roughly \$66,485.00.

(Exhibit B received in evidence subject to the objection on the part of plaintiffs that it was irrelevant, immaterial, self-serving and not binding on the plaintiffs.)

This sale was a favorable sale. I was operating under a limited capital, and was unable to get the amount of finances I needed to take care of the increased business of the company and this was an opportunity to get a fair price for the equipment and \$15,000.00 in addition for the rights, which, if I hadn't been any more successful in get-

ting ample finances than I had been in the past, might be lost in whole or in part, and I might have suffered a loss of that money because of that. When I speak of suffering a loss of rights in whole or in part I mean the amount for which I got \$15,000.00. That actually did happen, immediately prior to the time the deal was completed, [fol. 109] from the ones holding the equipment contract, they attempted to replevy the equipment, which wouldn't leave me equipment to operate the lines with, and it was impossible to secure other equipment at that time. I feared that I would have had a non-operation or an abandonment of rights. To the extent of the \$15,000.00 the sale preserved to me the value of these rights. (Tr. pp. 16, 17, 18)

Mr. Moore: " * * * The following facts are stipulated to be true:

"1. That subsequent to September 22, 1942, the intervenor, Glendenning Motorways, Inc., and defendant Styer filed their joint petition with the Interstate Commerce Commission, requesting temporary authority be granted to Glendenning Motorways, Inc. to operate the properties and privileges of defendant Styer for a period of 180 days from the date of the granting of such request.

"2. That subsequent to September 22, 1942, and concurrently with the filing of aforesaid petition, said intervenor, Glendenning Motorways, Inc. and defendant Styer filed their joint application to the Interstate Commerce Commission for its order approving the one year lease set forth in the 'Agreement of Lease', dated September 22, 1942.

"3. That the Interstate Commerce Commission, by its order, granted the aforesaid petition for temporary authority, effective October 13, 1942.

"4. That on October 23, 1942, intervenor Glendenning Motorways, Inc. exercised its option to purchase the properties and privileges of defendant Styer according to the terms and for the price set forth in the option of purchase contained in said 'Agreement of Lease' dated September 22nd.

"5. That thereafter and on October 23, 1942, said intervenor Glendenning Motorways, Inc. and defendant Styer amended their petition, previously filed, for approval of

the one year lease (September 22nd, 'Agreement of Lease'), so as to pray for the order of the Interstate Commerce Commission approving the purchase of said property and [fol. 110] privileges by said intervenor Glendenning Motorways, Inc.

"6. That hearing was held upon the aforesaid amended application for approval of the aforesaid purchase before an Examiner for the Interstate Commerce Commission on October 31, 1942.

"7. That on February 6, 1943, said Examiner issued his proposed report to said Commission, copy of which is attached."

Mr. Newcome: "The plaintiffs agree that those are facts and do not object to the foundation but object to it on the ground that it is immaterial and irrelevant."

(The document as read by Mr. Moore in the form of a stipulation was marked "Defendants' Exhibit C" for identification.)

Judge Sanborn: "The Court will reserve its ruling."
(Tr. pp. 18, 19, 20)

Shortly after October 13, 1942, or I believe on October 20th, Glendenning Motorways went into operation of my properties and privileges pursuant to approval of the lease and under temporary authority from the Interstate Commerce Commission. (Tr. p. 20)

Cross-examination.

By Mr. Newcome:

The Isaac purchase was sometime in the fall of 1941, August sometime, I forget the exact date. That was the purchase of a route from Parkston, South Dakota, and four other towns into Sioux City via South Dakota Highways 37 and 50. That was in the fall of 1941 and was prior to the time of the Commission's report and order. The Hammond purchase was made either in January or early in February, 1942. That was a route from Sioux City to Yankton through Nebraska. (Tr. pp. 20, 21)

WITNESS WILLIAM GORDON GLENDENNING:

By Mr. Putnam:

I am president of Glendenning Motorways, Incorporated. That company is operated as a motor carrier under permits of the Interstate Commerce Commission. The main part of the operation is Chicago and Milwaukee to the Twin Cities; [fol. 111] Twin Cities to Fargo; Twin Cities to Duluth; Chicago and Milwaukee to points in southern Minnesota such as Rochester and Mankato, etc. (Tr. pp. 21, 22)

I heard Mr. Styer's testimony that I had a conversation with him in the spring of 1942 with reference to his property. We talked off and on for quite some time. I believe we really got serious about the matter after he received his order. Before he received the order he told me his order was pending, a recommended order. I mean a certificate was pending, a recommended order. Prior to the issuance of the certificate we just talked about negotiations for the purchase but there wasn't anything very serious or any figures or anything like that gone into, because I figured until he received his certificate he had nothing to sell in the line of rights. After he received the certificate I had further talks with Mr. Styer in regard to the purchase. The first conversation with him after July 11th was in the Universal Cafe on University Avenue, which happens to be between our two offices. I had heard that he had received the certificate and he told me that he had. Even prior to that time, unbeknown to him, I sent Mr. Jack Kriha, who was working in my office at that time, over to the local office of the Interstate Commerce Commission in Minneapolis to make a copy of the certificate. (Tr. pp. 22, 23)

Mr. Kriha reported to me the result of his investigation. He copied the certificate in longhand but intervenor's Exhibit 1 is a copy of the certificate.

Intervenor's Exhibit 1 received in evidence.

Following my investigation negotiations were then carried on and resulted in the signing of defendants' Exhibit A, as Mr. Styer testified. In making this contract I relied very much on the certificate issued by the Commission as protection of my purchase. That is the reason I sent Mr. Kriha over to the Interstate Commerce Commission to get a copy of it so I would be sure he had a certificate. (Tr. 23, 24)

After I had received a copy of the certificate the four of [fol. 112] us made a trip out in South Dakota and went over all of the routes and looked the whole territory over in general, that is, I made a thorough investigation at the expense of the Glendenning Company, and that one trip cost about \$300.00. (Tr. pp. 24, 25)

We took over the operation of the Styer properties on October 20th, and have been operating those lines continuously ever since. When we took over the lines we found that the equipment was in very bad shape. The tires were in very bad shape and it was in very poor mechanical condition. We started immediately to remedy that situation, in fact, between October 20th and October 31st we spent \$2,873.00 on the equipment, that is for tires and repairs. In November we spent \$2,369.00 in maintenance, which was out of the ordinary; December, \$1,978.00; January and February \$1,911.00. Over that period of time we spent \$2,060.00 on brakes and on one particular tractor \$600.00. It made a total of \$8,918.68, or the total expenditure so far has been \$11,791.85. That covers ten straight trucks, ten tractors and nine trailers. That expenditure was necessary to bring the equipment up to reasonable operating condition and to prevent breakdowns, so as to give the public service. We figured we had to do it. It was to overcome the depreciation of the equipment beyond what was normally to be allowed in a good operation. (Tr. pp. 25-28, inc.)

I first heard that this proceeding had been instituted to attack the validity of the Styer certificate at about 9:00 o'clock A. M., October 31, 1942. I received notice through the mail and it consisted of a letter and a copy of a complaint in this action. I was not named as a party in the complaint. Our hearing before the Interstate Commerce Commission on our request to purchase the Styer properties was set for hearing that morning at ten o'clock. (Tr. pp. 28, 29.)

Cross-examination.

By Mr. Newcome:

At the present time we are operating under a temporary lease the Styer properties. The expenditures I have mentioned were made starting October 20th. That is when we

[fol. 113] had the permission from the Interstate Commerce Commission to take over and operate the line under a temporary operating permit. At the present time a proposed report has been filed by Examiner Higgins recommending that the purchase of the Styer properties by my company be approved. That is the present status of the matter. In connection with the operation we had prior to the lease of the Styer operation we have some final orders covering just a portion of them. We have a final report and order from the Commission on the route between Chicago and Milwaukee; between Eau Claire and Duluth and between the Twin Cities and Fargo. We have a recommended order from the Commission but as yet we have no certificate covering any of our operations south of the Twin Cities. The recommended order is from an examiner. The operations in connection with which we have an order from the Commission are mainly grandfather operations between Chicago and the Twin Cities. In connection with all of our operations except the three routes I have mentioned we have not received a final order from the Commission nor a certificate of public convenience and necessity. We have filed exceptions to the proposed report of the Examiner but the Commission has not passed on the exceptions. (Tr. pp. 29, 30, 31)

Re-direct examination.

By Mr. Putnam:

The expenditures on the Styer equipment made up to October 31st amounted to \$2,800.00. By reason of our hearing to purchase the line we figured that we could put the equipment in the best possible shape that we knew how so that we could give service and try to build up our service on the line. Prior to that time there had been a lot of breakdowns. We had in mind to develop the territory that we were servicing as a permanent operation. (Tr. p. 31)

I understood Mr. Newcome to refer to the exception that we took to the Examiner's report in our own grandfather case. We took no exceptions to the order in the Styer purchase proceeding, that is, we have taken no exceptions to the report of Examiner Higgins recommending approval of the purchase. (Tr. p. 32)

[fol. 114] Witness CORNELIUS WILLIAM STYER, re-called.

I was served with the complaint in this proceeding either on the Monday or Tuesday following October 31st, that would be the second or third. I first heard of the action brought by the railroads to review the order of the Commission at the hearing for the purchase on October 31, 1942. There was some discussion at the table among our own group and the railroad attorneys I believe. I did not see the complaint at that time. (Tr. pp. 33, 34)

Mr. Newcome: "In view of the testimony in connection with the question of laches, I would like to ask at this time for permission to offer in evidence a copy of the application and amendment to the application in the BMC-8 proceeding. I understand that Mr. Moore has no objection to the foundation with respect to having it submitted at the hearing here but does object to its materiality."

Mr. Moore: "Yes, we do object to its materiality but do not object on the ground of lack of foundation, and if counsel desires to serve us with a copy of that afterward, it will be satisfactory to us."

Judge Sanborn: "Very well, it will be received then, subject to the objection of its materiality."

Plaintiffs' Exhibit No. 2 received in evidence.

Mr. Newcome: "For the purpose of the record, the Court received in evidence, subject to objection, defendants' Exhibits A, B and C. I would like to move at this time to strike those exhibits from the record on the ground of immateriality, they are self-serving, and not binding on the plaintiffs in this action."

Judge Sanborn: "The Court will reserve its ruling on the motion." (Tr. pp. 34, 35)

ORDER OF INTERSTATE COMMERCE COMMISSION APPROVING SALE BY STYER TO GLENDENNING MOTORWAYS, INC.

On March 13, 1943, the Interstate Commerce Commission, Division 4, entered its order approving the sale of Styer's properties and rights to Glendenning Motorways, Inc. Such order was made a part of the record by stipulation of the parties and approval of the District Court.

[fol. 115] This report will not be printed in the permanent series of Motor Carrier reports of the Commission.

INTERSTATE COMMERCE COMMISSION

No. MC-F-1981

GLENDENNING MOTORWAYS, INC.

—PURCHASE—

CORNELIUS WILLIAM STYER

*Submitted February 26, 1943.**Decided March 13, 1943*

Purchase by GLENDENNING MOTORWAYS, INC., of operating rights and property of CORNELIUS WILLIAM STYER, doing business as NORTHERN TRANSPORTATION COMPANY, approved and authorized, subject to condition.

Perry R. Moore for vendee.

Cornelius William Styer for vendor.

Alfred O. Bjorklund, A. C. Erdall, Bruce Moffett, Warren Newcome, B. H. Overton, W. H. Rohweder, G. M. Springer, and William Wilson for protestants.

REPORT OF THE COMMISSION

Division 4, Commissioners Porter, Mahaffie, and Miller
By Division 4:

No exceptions were filed to the examiner's proposed report.

Glendenning Motorways, Inc., of St. Paul, Minn., and Cornelius William Styer, doing business as Northern Transportation Company, also of St. Paul, by joint application filed October 1, 1942, as amended October 24, 1942, seek authority under section 5, Interstate Commerce Act, for purchase by the former of operating rights and property of the latter for a consideration in aggregate principal amount of \$66,485.57. Hearing has been held, at which seven rail carriers and five motor carriers¹ opposed the

¹ Great Northern Railway Company, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Chicago and North Western Railway Company, The Chicago, Rock Island and Pacific Railway Company, Chicago, Saint Paul, Minneapolis and Omaha Railway Company, The Minneapolis

application, one motor carrier, Wilson Storage and Transfer Company, introducing evidence.

Pursuant to authority granted under section 210a(b), vendee leased vendor's operating rights and property for a period expiring April 10, 1943, at a total rental of \$1,397.63 per month, which is to be applied on the purchase price.

Vendee, incorporated in Minnesota, was organized to take over and operate the individual motor-carrier business formerly conducted by William G. Glendenning. The latter is president and, with his wife, owns 99 percent of its outstanding capital stock. It operates pursuant to [fol. 116] pending "grandfather" application in No. MC-43475,² as a motor-vehicle common carrier of general commodities, in interstate or foreign commerce over an extensive net work of regular routes in Illinois, Iowa, Minnesota, North Dakota, and Wisconsin, in territory generally bounded by Duluth, Minn., and Ashland, Wis., on the north, Wisconsin Rapids, Milwaukee, and Kenosha, Wis., on the east, Chicago, Ill., Clinton, and Cedar Rapids, Iowa, on the south, and Fargo, N. Dak., Mankato and Albert Lea, Minn., on the west. It also conducts irregular-route non-radial operations within southern Minnesota, western Wisconsin, and northeastern Iowa transporting principally dairy products. On June 1, 1942, in No. MC-43475 (Sub-No. 2), a certificate was issued to it authorizing similar regular-route operations between Milwaukee and Chicago, Duluth and Eau Claire, Wis., and between Waukegan, Ill., and junction with certain highways over which it operates under the "grandfather" clause: On August 20, 1942, in No. MC-43475 (Sub-No. 3), a certificate was issued to it authorizing service between Minneapolis, Minn., on the one hand, and 16 nearby Minnesota points, on the other, and on May 18, 1942, in No. MC-43475 (Sub-No. 5), a certificate

& St. Louis Railroad Company, and St. Louis-San Francisco Railway Company, rail carriers; and Gateway City Transfer Company, Inc., Rohweder Truck Lines, Inc., Wilson Storage and Transfer Company, Tri-State Transportation Company, and Hi-Speed Motor Express, motor carriers.

² On July 25, 1940, in No. MC-FC-13109, arrangements were made to substitute vendee in lieu of Glendenning as applicant in No. MC-43475.

was issued to it authorizing service between Minneapolis and a nearby ordnance plant. It has been granted additional authority under section 210a (a) ³ to operate until December 31, 1944, to and from certain points in Minnesota and Wisconsin. It has a pending application under section 207, in No. MC-43475 (Sub-No. 1), for authority to extend its operations in Wisconsin. It owns and operates substantially more than 20 motor vehicles.

Vendor has been authorized ⁴ to conduct general-commodity regular-route operations, principally between St. Paul, Minn., and Mitchell, S. Dak., via Minneapolis, Glencoe, Gaylord, New Ulm (also via Marshall), Minn., and Brookings, Arlington, and Huron, S. Dak.; between St. Paul and Mitchell, via Mankato and Fairmont, Minn., and Sioux Falls, S. Dak.; between Arlington and Yankton, S. Dak.; between Brookings and Vermillion, via Sioux Falls and Beresford, S. Dak., serving all intermediate points except Beresford and the off-route point of South St. Paul, Minn.; between Huron and Fort Thompson, via Woonsocket, S. Dak.; between Mitchell and Lane, S. Dak.; between Yankton and Sioux City, Iowa; between Sioux City and Parkston, via Yankton, S. Dak., serving specified intermediate and off-route points; and to operate over irregular routes, transporting livestock from farms within 15 miles of Parkston, to Sioux City, and general commodities between Minneapolis, on the one hand, and 16 points in Minnesota, including St. Paul, in connection with his regular-route operations. Vendor also has been issued authority under section 210a (a) ⁵ to operate until December 31, 1944, in

³ In Nos. MC-43475 (Sub-Nos. 6TA, 7TA, 8TA, 9TA, and 10TA), by orders entered July 21, and September 12 and 14, 1942.

⁴ Certificates covering these operations were issued July 11, 1942, in No. MC-47644 (embracing No. MC-47644 (Sub-No. 1)), August 15, 1942, in No. MC-47644 (Sub-No. 2), and June 9, 1942, in No. MC-47644 (Sub-No. 3) (embracing Sub-Nos. 4, 5, 6, and 9).

⁵ Temporary authority orders were entered July 21, 1942, in No. MC-47644 (Sub-No. 11TA), August 17, 1942, in No. MC-47644 (Sub-No. 14TA), October 23, 1942, in No. MC-47644 (Sub-No. 15TA), December 3, 1942, in No. MC-47644 (Sub-No. 17TA), and September 29, 1942, in No. MC-47644 (Sub-No. 18TA).

transporting general commodities over short segments connecting his other routes between Vermillion and Yankton, S. Dak., and between certain points in Minnesota. Vendor's routes aggregate approximately 1,250 miles. His operations west of Mankato are complementary to those of vendee and these carriers have been interchanging traffic at that point and at St. Paul.

[fol. 117] In accordance with appropriate notice of intention to exercise the option to purchase the considered properties, granted in a lease agreement dated September 22, 1942, under which vendee is now conducting temporary operations, vendee would purchase the above-described operating rights, Nebraska and South Dakota intrastate rights (Nebraska No. N 6694 and South Dakota Nos. 74, 688, and 36) and 10 tractors, 9 trailers, 4 refrigerator units, 9 trucks, 2 passenger cars, and miscellaneous equipment, for \$66,485.57, less such aggregate amount as may have been paid as rental under the temporary authority. The parties value the motor-carrier equipment, which had a net book value of \$41,895 as of August 31, 1942, at \$51,486.

The total purchase price to be paid includes assumption by vendee of promissory notes secured by a first mortgage on the equipment in favor of Industrial Credit Company, dated October 20, 1942, in principal amount of \$22,000, payable in 24 monthly installments of \$990, including 4 percent interest, with the last payment due October 20, 1944; a second mortgage on said equipment in favor of Charles F. Murphy and Murphy Insurance Agency, Inc., dated October 20, 1942, in principal amount of \$21,440.55, payable \$407 each month, including interest at 8 percent, for a period of 12 months or until October 20, 1943, when the balance* (\$16,556) would become due and payable; and a note for \$6,000 given by vendor to his brother and secured by an assignment of the operating rights, payable \$200 per month beginning December 1, 1943. The difference of approximately \$8,660, between the total purchase price and the obligations assumed, less the lease rental on the basis of six months, would be paid to vendor at the rate of \$500 per

* The holder of this mortgage has indicated a willingness to refinance the debt on the same terms when the final payment becomes due and payable, provided the equipment is well maintained.

month, with 3 percent interest. However, vendee has the option of paying in full the \$6,000 note or curtailing it at the present rate of \$200 per month, in which latter event, the payments to vendor would be reduced to \$300 per month. Upon release of the operating rights by vendor's brother, vendee would assign the rights to vendor as security for the unpaid balance of the purchase price, with the understanding that when the balance due him is reduced to \$10,000 or less, vendee may, at its option, cancel the assignment and substitute motor-carrier equipment appraised at 125 percent of the balance due or other collateral acceptable to vendor.

Vendee's balance sheet as of September 30, 1942, shows assets aggregating \$377,492, consisting of: Current assets \$104,620, principally accounts receivable \$87,068 and material and supplies \$11,865; carrier-operating property, less depreciation, \$214,206;⁷ organization and franchises \$2,452; other intangible property \$11,132; deferred debits—prepayments \$31,232; and discount on capital stock \$13,850. Liabilities were: Current liabilities \$119,258, principally notes payable \$42,251 including \$31,766 due a bank, accounts payable \$39,824, and wages payable \$15,891; advances payable \$1,106; equipment contracts \$151,000; reserves \$11,215; common capital stock \$50,000; and surplus \$44,913. Vendee commenced operating as successor to Glendenning on October 1, 1940. Its income statement com-[fol. 118] bined with that of its predecessor for 1940 shows net income of \$25,798. Its income statements for 1941 and the first 9 months of 1942, show net income before provision for income taxes of \$8,090 and \$32,576, respectively, and after such provision, \$4,672 and \$13,576, respectively. Vendee's secretary testified that its net income for October, 1942, would be approximately \$7,500.

⁷ Includes 9 tractors, 7 trailers, and 8 trucks which have been fully depreciated. These vehicles are being operated by vendee, are in good condition, and were appraised by an equipment manufacturer on October 30, 1942, at \$29,550. The net book value of carrier-operating property, as shown, reflects an adjustment in annual depreciation rates on Diesel powered tractors from 33 $\frac{1}{3}$ to 25 percent, and on steel and aluminum semi-trailers from 20 to 16 $\frac{2}{3}$ percent, retroactive to January 1, 1942.

Vendor's balance sheet as of September 30, 1942, shows assets aggregating \$103,663, consisting of: Current assets \$15,859, composed of cash (debit balance) \$626, special deposits \$972, and accounts receivable \$15,513; carrier-operating property, less depreciation, \$41,940; intangible property—operating rights and good-will \$39,913; and deferred debits—prepayments \$5,951. Liabilities were: Current liabilities \$24,194, principally notes payable—bank \$2,500 and accounts payable \$20,327; equipment contracts \$36,945; and sole-proprietorship capital \$42,524. His income statements for 1940, 1941, and the first 9 months of 1942 show net income of \$15 and \$495 and deficit of \$1,774, respectively. Vendor's poor financial condition and earnings are attributed to a rapid expansion of his operations on a limited amount of capital and wartime restrictions on extension of credit. Following consummation of the transaction, he would be employed by vendee in a supervisory capacity.

Before grant of the above-mentioned temporary authority, shipments originated by vendor, including dairy and poultry products, destined to points served by vendee, such as Milwaukee and Chicago, were transferred to latter at St. Paul. Vendee also handled a substantial amount of traffic destined for points in vendor's territory for which it was not receiving adequate return loads. Under the lease vendee has been handling such traffic via the Mankato gateway, which is more direct than via St. Paul. At present the elapsed running time via Mankato is about the same as formerly via St. Paul because of emergency Federal regulations reducing speed on the highways. Second-morning delivery is provided out of eastern Wisconsin points and Chicago. It is possible that first-morning delivery out of the above territory can be provided when speed restrictions are removed. Such operations would also provide the only single-line motor-carrier service between many points on vendee's present routes and those of vendor, and as to numerous small points in South Dakota vendor provides the only motor-carrier service. It would also meet demands of certain shippers of perishable products who are reluctant to use two-line service requiring transfer of lading in transit.

Vendee has a departmentalized organization and necessary general facilities, including refrigerator equipment

and repair shop, to take over vendor's operations without materially increasing its overhead expenses. It is estimated, on the basis of vendor's income statement for the first nine months of 1942, that had vendee performed the combined service during that period its net income would have been augmented approximately \$30,000, principally through savings in the purchase of gasoline and oil, reduction in insurance premiums because of vendee's lower rates, consolidation of common terminals, reduction in cost of maintenance of equipment by using its own garage facilities, utilization of its present solicitation and office personnel, use of its own pick-up equipment in lieu of the equipment leased by vendor for that purpose, reduction in cost of tariffs, advertising, and maintenance of agency stations, and elimination of one round-trip schedule per day between Mankato and Minneapolis by reason of the more direct operation for more easterly points via Mankato. Vendor's gross operating revenues for the period indicated were \$95,509. Vendee is confident, based on its operating costs and the generally higher rates in effect in vendor's territory, that the profit from conducting the additional operations will be substantial.

Vendee's obligations on equipment, \$151,000, and on tires, approximately \$31,000, as of September 30, 1942, require [fol. 119] monthly payments of \$8,000 and approximately \$2,167, respectively, plus 5 percent interest, which payments would be reduced by \$1,000 monthly after January, 1943. If the instant transaction is approved and consummated, vendee would be required to assume and pay each month in addition to the above, a total of \$1,897, consisting of \$990, including interest on one note, \$407, including interest on another, and an aggregate of \$500 per month, plus 3 percent interest, on the remainder of the purchase price. Payments on its present obligations have been met by vendee without difficulty, and its officers are confident that savings alone will be sufficient to pay the installments due under the agreement. Vendee's president, who, with his wife, receives an aggregate yearly salary of \$31,000, has indicated a willingness to reduce such compensation by any reasonable amount which may be necessary in order to assist vendee in meeting its obligations. Considering vendee's ability to meet its present monthly obligations, the amount of increase in such monthly obligations which would result

from the instant transaction, and the anticipated savings following unification, in our opinion assumption of such additional obligations would not be likely to impair vendee's ability to continue rendering an efficient and adequate transportation service, nor would the assumption of fixed charges involved be contrary to the public interest. In view of the estimated savings under the unified operations, and the credit balance in surplus account, no undue hardship would appear to result were vendee required to write off immediately the amount of increase in its "Other Intangible Property" account resulting from the transaction, and our findings will be conditioned accordingly.

Protestants oppose the application on two principal grounds: (1) That vendee would use the acquired rights in connection with its presently claimed irregular-route rights in Minnesota in a manner detrimental to other existing carriers; and (2) that the territory in Minnesota and South Dakota is sparsely settled and adequately served by other existing transportation facilities.

Protestants did not elaborate on their first contention or introduce evidence on the point. Vendee claims certain irregular-route rights in southern Minnesota, principally in transportation of dairy products. However, in conducting such irregular-route operations in conjunction with regular routes following the instant transaction, vendee intends to move through traffic only by way of authorized "gateway" points in conformity with the principles enunciated in *Carolina Freight Carriers Corp.—Purchase—Edmunds*, 36 M. C. C. 259, *Cox Transp. Co.—Purchase—Moore-Flesher Hauling Co.*, 36 M. C. C. 515, and *B. & E. Transp. Co., Inc.—Purchase—Merchants Transp., Inc.*, 36 M. C. C. 561. In connection with the second contention, the record shows that vendor rendered, and vendee would continue to render as result of this transaction, the only motor-carrier service to and from approximately 20 communities in South Dakota. This territory is principally agricultural, is sparsely populated, and there is no evidence herein upon which to base the belief that protestants would be substantially affected by the proposed unification. Vendor has been actively serving the territory involved.

We find that purchase by Glendenning Motorways, Inc., of the operating rights and property of Cornelius William Styer, doing business as Northern Transportation Com-

pany, upon the terms and conditions above set forth, which terms and conditions are found to be just and reasonable, is a transaction within the scope of section 5 (2)(a), and will be consistent with the public interest, and that, if the transaction is consummated, Glendenning Motorways, Inc. will be entitled to a certificate covering rights confirmed in Nos. MC-47644 (embracing Sub-No. 1), MC-47644 (Sub-No. 2), and MC-47644 (Sub-No. 3), (embracing Sub-Nos. 4, 5, 6, and 9) and will also be entitled to operate as a common carrier of the commodities, between the points, and for the periods authorized in orders entered July 21, August 17, October 23, December 3, and September 29, 1942, [fol. 120] in Nos. MC-47644 (Sub-No. 11TA); MC-47644 (Sub-No. 14TA), MC-47644 (Sub-No. 15TA), MC-47644 (Sub-No. 17TA), and MC-47644 (Sub-No. 18TA), respectively, which rights are herein authorized to be unified with rights otherwise confirmed or which may be confirmed in Glendenning Motorways, Inc., with duplications eliminated; *provided, however*, that if the authority herein granted is exercised, Glendenning Motorways, Inc., shall write off to surplus immediately the amount of increase in its "Other Intangible Property" account resulting from the instant transaction.

An appropriate order will be entered.

[fol. 121]

Order

At a Session of the Interstate Commerce Commission,
Division 4, held at Its Office in Washington, D. C., on the
13th Day of March, A. D. 1943

No. MC-F-1981

Glendenning Motorways, Inc.—Purchase—Cornelius
William Styer

Investigation of the matters and things involved in this proceeding having been made, and said division, on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which report is made a part hereof:

It is ordered, That purchase by Glendenning Motorways, Inc., of St. Paul, Minn., of operating rights and property of Cornelius William Styer, doing business as Northern

Transportation Company, also of St. Paul, be, and it is hereby, approved and authorized, subject to the terms and conditions set out in the findings of said report.

It is further ordered, That, if the parties to the transaction herein authorized desire to consummate same, they shall (1) notify this Commission in writing of the intended consummation date, (2) promptly take such steps as will insure compliance with sections 215 and 217 of the Interstate Commerce Act, and with the rules, regulations and requirements prescribed thereunder, and (3) confirm in writing to the Commission, immediately after consummation, the date on which consummation has actually taken place.

It is further ordered, That unless the authority herein granted is exercised on or before April 10, 1943, this order shall be of no further force and effect.

It is further ordered, That, effective with consummation of the purchase herein authorized, the authority granted in the first ordering paragraph of order entered October 13, 1942, for temporary operation of the motor-carrier properties of Cornelius William Styer, shall be of no further force and effect.

It is further ordered, That recital in said report of balance-sheet and other financial data shall not be construed as approving accounting methods which have been followed or expenditures represented thereby.

It is further ordered, That, before recording the purchase upon its books, Glendenning Motorways, Inc., shall submit the related journal entries, in triplicate, to our Bureau of Motor Carriers for approval.

And it is further ordered, That nothing herein contained shall be construed as a determination of the operating rights of any person or persons under any section of the act, except section 5 thereof, as expressly determined herein.

By the Commission, division 4:

W. P. Bartel, Secretary. (Seal.)

[fol. 122] ABSTRACT OF PLAINTIFFS' EXHIBIT 1

Abstract of Evidence in No. MC-47644,

In Proceedings Under the
"Grandfather Clause"(Page References Are to I. C. C. Reporter's Transcript in
Plaintiffs' Exhibit 1)

Testimony of C. W. Styer

Exhibit 1 is a map of the State of Minnesota. Traced with yellow markings are the routes in applicant's BMC 8 application, traced in black markings are the routes in applicant's BMC 1 application, and traced in red markings are the routes granted by the compliance order (p. 11, 12). Exhibit 2 is a map of the State of South Dakota and the markings are similar to those contained on Exhibit 1 (p. 12, 13).

Witness C. W. Styer, applicant, residence Minneapolis, Minn., engaged as motor carrier doing business as Northern Transportation Company, 2654 University Ave., St. Paul, Minn. (p. 16) Started business April 1, 1935. Not engaged as proprietor of motor carrier business prior to that date. Prior to April 1, 1935 and for about seven years in employ of J. W. Crabb, a common carrier by motor vehicle in intrastate and interstate commerce. Crabb located at Huron, S. D. (p. 16, 17).

In working for Mr. Crabb the territory I had to do with principally was between the Twin Cities and South Dakota from various points on Crabb's routes and territory. On April 1, 1935, I went into business for myself. At that time the office was at the same place that it is now. I started the operation with two new straight trucks on April 1st. On April 9, 1935, I got two tractors and two semi-trailers. To my knowledge I did not add anything to my equipment, other than I testified to, between April 1, and June 1, 1935. (p. 17, 18).

I have in my possession freight bills showing actual operation performed on and prior to June 1, 1935. Exhibit 3 is an abstract of the freight bills covering operations performed by me between April 1 and October 15, 1935. It was prepared from freight bills that I have in my records today and under my supervision and direction. It shows the date,

point of origin, destination and commodity hauled as to each shipment shown on the exhibit and the information was taken from the freight bill. Also the exhibit shows the point at which I interchanged the shipment, that is, where I did not haul the shipment all of the way between origin and destination the interchange point is shown. This exhibit shows the shipments actually hauled in my truck from the points of origin and destination shown.

Exhibits 3 and 7 do not show a record of shipments for the week of April 26 to May 1, 1935, and this gap certainly indicates to me that the freight bills for that period are lost. (p. 191).

[fol. 123] The shipments on the exhibit did move in my trucks between the points shown. I have available for inspection all freight bills from which the exhibit was prepared and to the best of my knowledge the exhibit is true and correct (p. 18, 19).

From April 1 to October 15, 1935, I was the proprietor of Northern Transportation Co. and managed its affairs and routed all trucks. By reference to Exhibits 1 and 2, I am able to explain from what routes and over what routes my trucks traveled in carrying the shipments shown in Exhibit 3. On June 8, 1938, the Interstate Commerce Commission issued a compliance order so-called in my grandfather application docket. The routes shown in the compliance order are marked in red on Exhibits 1 and 2. My trucks traversed those highways between April 1 and June 1, 1935, in carrying the shipments shown in Exhibit 3 (p. 33, 34, 35).

Prior to June 1, 1935, my trucks traveled over other routes in South Dakota. I have reference to the route on S. D. Highway 34 from junction of U. S. Highway 77 to the Minnesota State Line. My trucks also traveled over the route running from the junction of S. D. 34 with U. S. 77 and traveling south on U. S. 77 to junction with U. S. 16. That route is not marked red on Exhibit 2 and shipments shown on Exhibit 3 moved over that route prior to June 1, 1935. I have not covered all of the routes I actually operated over in carrying shipments shown on Exhibit 3 between April 1 and June 1, 1935. I also operated over U. S. 81 between its junction with U. S. 16 and its junction with S. D. 38. That was prior to June 1, 1935. That completes the description of the highways my trucks actually operated over in carrying shipments shown on Exhibit 3 prior to June 1 (p. 36, 37, 38).

Prior to June 1, 1935, I operated over these routes regularly. Prior to June 1 we served points on U. S. 14 almost every day. We did not always follow the same route but we gave daily service to the towns on that route. We operated our trucks daily over the routes I have described. We operated daily except Sunday, although sometimes shipments would move on Sunday (p. 38, 39).

My application asks for an irregular service to a territory circumscribed by the regular routes described in the application and described in Exhibits 1 and 2 by black lines on the highways. In serving towns located near the regular routes our trucks operated over these highways to the closest point to the town when it diverted from the regular route. The trucks were instructed to follow the regular route. However, on an off route point they would have to leave the regular route and then come back to it. So far as possible the trucks followed the regular routes in conducting the irregular or off route points service (p. 39, 40). [fol. 124] Exhibit 4 lists various expense bills showing the dates and in some cases the approximate date when items were purchased by truck drivers of Northern Transportation Co. during April and May, 1935. These items were purchased in the towns and on the dates shown on the exhibit. The exhibit was prepared from receipts brought in by truck drivers and turned in to the office for reimbursement for company expenses on the road. These receipts are in my possession and are available for inspection. I am able to testify by reference to the journal entries shown on the receipts that the items were purchased in the town and on the date shown in the exhibit (p. 40, 41, 42).

On and prior to June 1, 1935, I solicited business for intermediate points on the regular routes I operated over. I contacted personally quite a few shippers. They were located principally in the Twin Cities because that was the location of our main office, and also because the time being limited between the time I started and June 1, that I have not had an opportunity to go out into the field a great deal myself. I instructed National Truck Terminal, with whom we were associated at the beginning of my business, to have their solicitors solicit business for a list of towns and to have their drivers accept shipments to those towns for Northern Transportation Co. This concern was and still is independent and handles pickup, delivery and soliciting for various truck firms. Also they have dock space avail-

able for the use of carriers. We had an office in the National Truck Terminal building (p. 42-45). We used the dock and those terminal facilities at the commencement of our operations on June 1, 1935. This concern had solicitors and also men from their office and also their pickup drivers who solicited for the carriers using that service. Exhibit 5 is a copy of a list of towns and rates used by J. W. Crabb for service into South Dakota prior to my starting as a proprietor in the trucking business. This is the same Crabb I had worked for previously and he did business as North West Transportation Co. He had his terminal facilities in the Twin Cities at the National Truck Terminal, and Exhibit 5 was prepared in its present form by that company. On April 1, 1935, Crabb was not in business. The list of towns which I instructed the National Truck Terminal to solicit business on my account is on Exhibit 5. Also I asked them to quote the rates there shown to the points indicated. (p. 46, 47, 48).

It was my purpose from the beginning to solicit and render service to the intermediate points. What I attempted to do was to get a truck service comparable to that that Crabb had been giving. It was a daily service to a number of points in South Dakota; to any of the points along the routes. We accepted any freight we were able to get from the time we started. We solicited freight for all points along the route. Because of various contacts at some of these towns we got much more freight there. I [fol. 125] was born at Huron and was well acquainted there and consequently Huron developed faster than some of the other points, but at no time did we turn down freight for any of these points along the routes in South Dakota. I am referring to the towns shown by Exhibit 5 (p. 53, 54). Between April 1 and June 1, 1935, my facilities were such as to permit carrying shipments to the intermediate points not covered by Exhibit 3. There was actual space on my trucks which would have allowed me to accept, carry and deliver shipments to these intermediate points had I received any during the period prior to June 1, 1935. (p. 54). Never at any time did I intend or offer to the public simply a non-stop operation between the Twin Cities and Huron prior to June 1, 1935 (p. 54, 55).

I have personal recollection of having solicited particular shippers prior to June 1 for shipments from the Twin Cities to South Dakota points located on or near the routes

described in this case. These were Armour & Co., St. Paul; Commercial Gas, Minneapolis; Griggs Cooper & Co., St. Paul; Hancock Nelson, St. Paul; Red Owl Co., Minneapolis; Montgomery Ward & Co., St. Paul; various trucking lines serving points east of the Twin Cities and direct solicitation of business by truck drivers at Huron, S. D., the Huron Grocery Co. and Armour & Co., Huron, together with a number of accounts in South Dakota (p. 56, 57). The solicitation I refer to was by me personally. There was considerable other solicitation that I performed personally that I would be unable to recall. The drivers were instructed to solicit business from all towns on the routes through which they passed, to solicit freight in either direction (p. 57).

Exhibit 6 is a copy of the certificate issued to me by the Board of Railroad Commissioners of South Dakota on May 27, 1935. That is the first operating authority I received from the State of South Dakota. I applied for this authority as early as April, 1935, when I appeared in person at Pierre, S. D. (p. 58, 59).

Exhibit 7 shows certain trips taken from manifests and freight bills in our files. In the conduct of my business since April 1, 1935 we kept trip sheets, so-called. We keep trip sheets now but on April 1, 1935 we did not have them all and the file was incomplete. The items for April, 1935, on Exhibit 7 represent in each case a trip made by one of my trucks and shows the towns served on that trip. It refers only to the towns that our trucks served. For example on April 16th if on a particular trip we had freight for Yankton and interchanged it with someone we did not show Yankton on the exhibit. The exhibit indicates that the towns were served directly by our truck. I have the original record from which this exhibit was prepared and they are available for inspection (p. 59-61).

During May 1935 the Exhibit does not show all the trips our trucks made because it only shows those for which we have the exhibits or other items here. From this exhibit I am not stating that we made other trips but merely that we may have.

[fol. 126] The word "incoming" opposite June 1st on the first page of Exhibit 7 means that on that date a manifest was made out showing shipments from Huron and Mitchell to the Twin Cities. Where a town appears on Exhibit 7

it does not indicate either origin or destination but merely that the truck was in that town on that date. Most of the shipments that are not incoming shipments are west bound shipments where the movement started at the Twin Cities. That is, so far as Northern Transportation is concerned, and the delivery was made at the towns shown except a point such as Hill City, which was an origin point. The movement from Hill City was entirely potatoes. At the start we did not have enough business to give a daily service to the points on the routes and that was the reason for soliciting this potato account (p. 63-66). A great proportion of the freight hauled westbound to South Dakota originated in the Twin Cities. On each of the westbound movements shown in Exhibit 7 the truck started at the Twin Cities. Where an origin point intermediate between the Twin Cities and the ultimate South Dakota destination is shown that means our truck starting from the Twin Cities picked up a shipment intermediate and carried it to South Dakota or if it was incoming, back to the Twin Cities. This is with the exception of Hill City and Baker where we handled potatoes only (p. 67, 68).

Exhibit 7 shows we had a truck April 16th in Huron and in Mitchell. On May 7th it is not exactly true that we had a truck at Huron and also at Baker, Minn. The manifest was made out when the truck went out and was destined for Huron or Mitchell. It could not have been in Hill City the same day (p. 69).

Mr. Norgaard: What I would like to get clear is this: Is exhibit 3 supposed to be complete?

Mr. Fiddes: It reflects all he can find.

Mr. Norgaard: There is nothing in exhibit 7 that is not in exhibit 3.

Mr. Fiddes: There are no towns.

Mr. Norgaard: Exhibit 3 is complete, I suppose, but the origin and destination and date are carried.

Mr. Fiddes: Yes. We are not offering exhibits comparable to exhibit 3 for every month during the entire three years. He is also offering this as conducive to show continuance of the operation which need not be as specific proof as the grandfather date.

Mr. Norgaard: Mr. Fiddes, is exhibit 7 an abstract of what you might term trip sheets?

Mr. Fiddes: That is what it is.

Mr. Moore: That is the point.

Mr. Norgaard: Exhibit 7 is an abstract which the trip sheets would show.

Mr. Moore: Yes. (p. 70)

[fol. 127] Exhibit 8 is a copy of the certificate issued to me by the Board of Railroad Commissioners of South Dakota on July 19, 1935. Exhibit 9 is a correct copy of the certificate issued to me by the same Board on the same date. Exhibit 10 is a Western Union telegram received by me from that Board Sept. 19, 1935, and was in response to my application for operating authority (p. 71-73).

Exhibits 11 and 12 are copies of certificates issued by the South Dakota Board on the date shown (p. 75-78). Exhibit 13 is a copy of a permit issued by the Minnesota Railroad and Warehouse Commission on the date shown thereon (p. 77, 78).

Exhibit 14 shows the total number of different shipments transported by Northern Transportation trucks during each month and also the total for each year from Jan. 1, 1936 through November, 1938 (p. 79). The shipments moved to points we have served since we commenced business and to the points and on the route involved in this application and to some points not involved in the application (p. 79, 80).

We have continued to render a daily service up to this time to the points and over the routes set forth in our grandfather application. Part of that continuance is shown in the documentary evidence referred to. At the present time we have 14 units. That would mean that a tractor and semi-trailer is counted as 2 units. We have 5 tractors, 5 semi-trailers and 4 straight trucks. These were purchased during the last two years (p. 80, 81).

I knew that under the laws of the State of South Dakota I had to have a certificate from that Commission to engage in interstate commerce. On June 1, 1935, I did not have a certificate in my possession to any point although I had made application early in April. Prior to June 1, 1935, I did not have a certificate from the South Dakota Commission to transport property from the Minnesota line just east of Sioux Falls to Sioux Falls, or west of Sioux Falls on U. S. 16. I do not contend that I either picked up or delivered any freight at Sioux Falls prior to June 1, 1935 (p. 81, 82).

“Mr. Janes: Do I understand that the applicant is seeking grandfather rights into any of the Minnesota towns located on the routes he has referred to as regular routes in his exhibit, map of Minnesota, Exhibit 1?

Mr. Moore: Applicant does not seek any rights, grandfather rights, to transport goods moving in interstate commerce from any Minnesota point to any Minnesota point upon the routes described, but he does seek to transport from points in South Dakota on these routes to all points in Minnesota irregularly. If that is not clear, I can amplify it further.

Mr. Norgaard: I should think that would be clear enough.

Mr. Moore: From the Twin Cities to any Minnesota points goods moving in interstate commerce, we don't propose to transport under this application" (p. 95, 96).

[fol. 128] **Mr. Janes:** You would not take a shipment from Chicago and deliver it to applicant's truck line at New Ulm, Mankato or any other points on these regular routes?

Mr. Moore: That is correct.

Mr. Janes: Those are marked on your map Exhibit 5, I think?

Mr. Moore: All of those described in the application.

Mr. Janes: That is a correct statement?

Mr. Moore: Yes.

Mr. Janes: But you do claim rights in South Dakota, when you pick up commodities in South Dakota, to deliver those commodities in Minnesota, to points in Minnesota on those routes?

Mr. Moore: Yes.

Mr. Norgaard: Amplify that.

Mr. Moore: Applicant does not claim grandfather rights under this application to transport goods moving in interstate commerce from points in Minnesota to other points in Minnesota; but this is in no way a waiver of his claim under the application to transport goods from authorized points in South Dakota, regular routes and the territory as described by those routes to any point in Minnesota (pp. 96-97).

Mr. Newcome: One more question: Do you claim the right to serve points in Minnesota from South Dakota, from points both on your regular routes and your so-called irregular routes?

Mr. Moore: From points in South Dakota and from the territory circumscribed by those described routes.

Mr. Newcome: You have some here that are not circumscribed.

Mr. Moore: And all off-route points.

Mr. Newcome: How about Pierre and Chamberlain; you haven't any regular route there, as I understand it?

Mr. Moore: That's correct.

Mr. Newcome: You claim right to transport shipments over all regular routes, from all regular route points and irregular route points as set out in your application to South Dakota.

Mr. Moore: That is correct.

Mr. Newcome: To any point in Minnesota shown on the map attached to the application?

Mr. Moore: I think I can answer that, yes. Is the whole state shown?

Mr. Newcome: You overlooked some, Chisholm and Bemidji and some others.

[fol. 129] Mr. Moore: To the entire state of Minnesota is what I mean.

Mr. Newcome: Also every point in Minnesota from every point in South Dakota, regular or irregular.

Mr. Moore: That's correct.

Mr. Springer: From every point in Minnesota, back into South Dakota, to this territory, too.

Mr. Moore: On irregular routes, I believe it does, Mr. Springer.

By Mr. Moore:

Q. Is that right, Mr. Styer?

A. Yes, it does (pp. 97-98).

We have no more documentary proof. We have no further documentary proof regarding a movement from South Dakota to Minnesota or Minnesota to South Dakota. We have no more documentary proof of irregular route operations. (pp. 100, 101).

[fol. 130] Cross-examination.

On U. S. 16 through Luverne and Sioux Falls we operated daily service prior to June 1. It would be impossible for me to say without a definite check how many different days prior to June 1 we made daily trips over that high-

way. Exhibit 3 does not show which route the trucks went over. It shows only the points to which merchandise was picked up or delivered. Exhibit 4 shows the route our trucks went over prior to June 1. That exhibit is not complete. I know that the truck ran over that route because I dispatched them over that route. The exhibit is evidence that such dispatches were followed out. The route through Sioux Falls is the most direct route to Mitchell. The route to Sioux Falls was traversed and the drivers instructed to solicit business at Sioux Falls and in the other towns along that route. We were in the process of developing that route and consequently on April 1 we would not have freight on all points until it was solicited. Another reason we couldn't take freight to Sioux Falls prior to June 1 was that it was not offered. It would not have been a violation of the laws of South Dakota to do it. I did not get a certificate from the South Dakota Commission to operate on U. S. 16 to Sioux Falls and west until October, 1935. Sioux Falls has a population of about 38,000. I am not in position to say whether there are 2,000 places of business in that city. Last month we served 159 customers there. That is the month of October and November, 1938. On June 4th, 1935, we delivered one shipment to Sioux Falls (p. p. 106-110).

[fol. 131] Ordinarily, I have used the word "manifest" as to what has been formerly referred to here as a trip sheet. A trip sheet is a sheet that is made out prior to the time the truck leaves the home office, listing the shipments that were on that truck, the commodities and the various destinations to which those shipments go.

During May and June and up to the present date almost every truck that goes out has had manifests or trip sheets with it. In certain cases, however, trucks have gone out without a manifest as, for example, where a load is picked up at other than the home terminal and he has no opportunity for a manifest to be made out, at some point in Minnesota, and a point in South Dakota (pp. 111-112).

The expense items on Exhibit 4 does not necessarily mean that we delivered freight at the points where purchases were made. This exhibit does not purport to show deliveries. Our deliveries are shown in another exhibit; (pp. 142-143).

It is my contention that prior to June 1, 1935 and between June 1, 1935 and April 1, 1935, I transported shipments

from South Dakota to points and places in Minnesota or from points and places in Minnesota other than the Twin Cities to South Dakota.

To name the points in Minnesota that we transported shipments to from South Dakota or from points and places in Minnesota and South Dakota other than the Twin Cities I would have to consult Exhibits 3 and 7. It is not correct to say that the commodities we transported to such points and places would all be shown on Exhibit 3. We also have Exhibit 7. Exhibit 3 shows shipments evidenced by freight bills and Exhibit 7 truck loads of movements to certain towns as evidenced by trip sheets or manifests. We rely on exhibits 3 and 7 as well as other exhibits. The other exhibit would be exhibit 4, which shows the purchases on these routes (pp. 144-147).

Redirect examination:

When I first commenced business in the State of South Dakota between the Twin Cities and South Dakota points I had considerable potatoes and frozen eggs as a backhaul from Mitchell to South St. Paul and other points in Minnesota. I recall Mankato for one of the other points. I don't have any documentary evidence of these shipments (p. 167). On these shipments from South Dakota to Minnesota no freight bills were issued on any of the earlier movements, especially on straight loads. There was one particular movement that happened in April, May and the early part of June from Mitchell to South St. Paul and some shipments to Mankato. In our file we have a duplicate freight bill 1188 and this lists a number of shipments from April 4 to April 13 from Mitchell to South St. Paul. I don't see any others to points other than South St. Paul and the Twin Cities (pp. 169-172).

I started business April 1st and consequently I could not very well have had bills, manifests and everything printed and on file to keep the records that we do today. I did not have printed forms for the movement on some trucks. I was on them myself (pp. 210-213).

[fol. 132] Exhibit 15 is a list of extra individual shipments carried on trips shown in Exhibit 7 which individual shipments were not, however, shown in Exhibit 7. It purports to show shipments actually carried on my truck between the points of origin and the points of destination shown on

the date shown consisting of the commodities listed. This exhibit was prepared from records showing that I carried these shipments in my truck. The information shown on this exhibit is true and correct to the best of my knowledge (pp. 199-201).

Exhibit 16 is a supplemental list of shipments not shown in Exhibit 3. Freight bills were not issued at the time the shipments mentioned in Exhibit 16 were carried and therefore the shipments herein shown were not included in Exhibit 3, which was prepared from my freight bills. The shipments in Exhibit 16 actually moved in my trucks from the points of origin to the points of destination shown and consisted of commodities and weights shown. This exhibit was prepared under my supervision and direct from my records which I personally consulted (pp. 203-204).

Exhibit 17 is a reconstruction from various information of trips not shown in the original Exhibit No. 7 compiled from trip sheets. It shows additional movements of trucks on the date shown by the exhibit. Where the word "incoming" in parentheses is not shown, it shows that the movement is westbound originating at the Twin Cities, where my terminal was, and was delivered at the city shown on this exhibit. The word "incoming" in parentheses refers to eastbound movements originating at the points shown on the exhibit and destined for St. Paul, unless otherwise shown. The numbers in the right-hand column indicate the different sources from which this exhibit was compiled. Items that have the footnote 1 indicated were reconstructed from freight bills and other types of bills in our files. The number 2 refers to items prepared from records of my customers that showed I had made such trips for them. The number 3 refers to items prepared from manifests in my files (pp. 210-212).

Exhibit 18 is an abstract of freight bills of shipments carried on our trucks from October 16, 1935 to December 31, 1935, inclusive. It was prepared from freight bills in my records which are available for inspection here today and under my supervision and direction and is true and correct to the best of my knowledge. It shows the origin, destination, date, commodity and pro number of shipments actually moving in my trucks (pp. 214-215).

Exhibits 19 and 20 are abstracts of freight bills showing respectively for the month of October 1938 and the month

of November 1938 the shipments carried by me. They show the date, origin, destination, and commodity of the shipments hauled. These exhibits were prepared from freight bills in my possession which are here for inspection and are true and correct to the best of my knowledge and belief (220-222).

[fol. 133] Recross-examination.

By Mr. Springer:

Q. Mr. Styer, as to shipments between points in South Dakota on the routes designated on your exhibit No. 2, and the Twin Cities, you do not claim irregular route grandfather rights for that territory, as well as regular, do you?

A. I haven't these exhibits in front of me.

Q. This is your South Dakota No. 2.

A. Your question is what?

Mr. Springer: Read the question.

(Question read.)

A. I do not see the object of that question. The irregular would be irrelevant if we were claiming a regular.

Q. I will ask you the farther question: you do not claim both, then?

Mr. Moore: As to what?

Mr. Springer: He does not want to serve that territory either as a regular route operator or as an irregular route operator, depending on his own selection of the service he proposes to give.

Mr. Moore: Do you fully understand the question, Mr. Styer, and all of its implications?

The Witness: I doubt very much if I do. He is asking me on these routes; on these routes we are and have been giving regular service, and where we are giving regular service on all commodities, and I cannot even see the purpose of an irregular operation entering into it.

By Mr. Springer:

Q. Then you do not want irregular service to those points where you are doing that?

A. On the regular routes, no (pp. 256-257).

[fol. 134] I claim to have a regular operation and an irregular operation in Minnesota. The regular operation is

over the routes shown on Exhibit 1. The irregular territory or routes are not indicated on this exhibit. I claim to have regular and irregular operations of general commodities.

A. The regular operation, as indicated by the routes shown on this map, are the routes over which our trucks go daily and that service is given; those trucks go through those towns over those routes whether or not they have shipments for every town on those routes on every particular day. The irregular operation is only for irregular shipments; in other words, for the town of Albert Lea a truck would not go to Albert Lea unless it had a shipment for Albert Lea. In that nature it is irregular.

By Mr. Moore:

Q. You mean when you say regular operations, regular route operations; operations over regular routes, with more or less of a fixed time schedule?

A. Yes.

Q. That is the bulk of your operation?

A. Yes.

By Exam. Peterson:

Q. In other words, you claim operating rights from Albert Lea to Fairmount, over U. S. Highway 16, which is not shown on your Exhibit No. 1.

A. No. You mean on the irregular? There is no highway specified. The irregular operation is only supplemental to our principal operation, which is the regular routes indicated there. It is principally for back-haul out of South Dakota. The movement is unbalanced between the west-bound and the eastbound freight; consequently, the occasion arises for handling freight other than that destined to points on the regular route, to attempt to balance the amount of freight moving, so that the trucks can more nearly move loaded in both directions. When I mention Albert Lea I don't know whether or not we have served that point. I mentioned that as an example (pp. 277-280).

Redirect examination.

What we are asking for is a territory to which we offered service prior to June 1 and to which we have offered service up to the present date, over irregular routes on loads when

available because there is no direct service to that point and there is a demand for service. We wanted it as a territory, to be operated in conjunction with our regular route operation (p. 280). In other words our irregular operation is intended to take care of the movement mainly from South Dakota back into Minnesota. We are not asking for the right to transport commodities in interstate commerce from Minneapolis to Albert Lea. We are specifically restricting so as to not apply in interstate commerce between points in Minnesota. In short our operations from the Twin Cities to the South Dakota territory is chiefly our regular route operations (p. 281).

Originally we asked for territory in the entire State of Minnesota. We have now restricted that to a small territory in the southern and southwestern part of Minnesota. Exhibit 26 shows a line drawn in Minnesota over U. S. 52 from its junction with the Minnesota-Iowa line to its junction with Minnesota Highway 28 and thence over the latter highway to its junction with the South Dakota-Minnesota line. That line shows the outer boundaries of our territory in Minnesota and it is in that territory that we are claiming operating rights (p. 282, 283).

[fol. 135] Exhibit 1 shows all the regular routes that I claimed that I have operated over on and after June 1, 1935, but not including off route points. The route used in serving off route points is not shown on this exhibit. Our trucks did not follow any definite highway in connection with the territorial operations. If we carried a shipment from some point in South Dakota to a point some distance removed from our regular routes in Minnesota, I am unable to state what highway we would use. We would not always follow the same highway to reach that irregular point. (p. 283-296) Baker is a point outside of the restricted area in Exhibit 26 that I actually served on June 1 and prior thereto. We served Grand Rapids, Atkinson, Hill City and Two Harbors in either direction. That is as far as I would want to go definitely in connection with points outside the restricted zone on Exhibit 26. These are named in Exhibit 3 and I am testifying from my recollection of that exhibit. (p. 296-298) The points we served are shown on Exhibits 3 and 7 but these are not complete because in connection with many of the irregular shipments, especially straight loads there were no freight bills or manifests.

These exhibits are based on actual freight bills and trip sheets and the evidence as to shipments to other points rests primarily upon testimony because we made no manifests, trip sheets or bills. We hauled to South Dakota potatoes, construction supplies, machinery, canned goods from canning factories from various towns in Minnesota. We handled produce from various houses in South Dakota to other houses of the same companies in Minnesota. We commenced making bills and keeping records of this type of movement about June 1. (p. 305, 306)

[fol. 136] By Mr. Moore:

Q. The map at which you are now looking is in the original docket file of the Commission, attached to the application; you will note at the bottom the description of the irregular routes, designated in green; have you got that?

A. Yes.

Q. Now look at the green dots on the map of Minnesota. Now did you serve from your South Dakota points around June 1, 1935, those Minnesota points or those Minnesota points to the South Dakota points?

A. In my opinion, yes.

Q. Well, in your opinion, is it a fact that you did?

A. Yes.

Q. What are they, read them.

A. Moorehead, Bemidji, Detroit Lakes, Fergus Falls, Hill City, Grand Rapids, Two Harbors, Duluth, Atkinson, Brainerd, Little Falls, Sauk Center, Pine City, Ortonville, Willmar, Montevideo, Granite Falls, Owatonna, Waseca, Winona, Rochester, Albert Lea, Blue Earth. Those are most of them, I may have missed some of them.

Q. Baker and Grand Rapids?

A. Baker is not marked in green here; but I do recall that we handled shipments to Baker.

Q. Did you name Redwood Falls and Marshall?

A. Redwood Falls and Marshall are on the route. I made no manifests or trip sheets or bills as to these shipments (pp. 304-305).

As to some of these irregular shipments both eastbound and westbound, there were no freight bills or manifests because in the real early part of our operation we had no freight bills and some shipments did not originate or ter-

minate at a place where we had billing facilities (pp. 304-305).

[fol. 137] Recross-examination.

Q. You also stated that prior to June 1, 1935, that you did not make a practice of making freight bills for all of the movements that you transported.

A. I said that our records were incomplete.

Q. Now, then, I would like to call your attention to Exhibit No. 3 of May 1, 1935, showing a shipment from Atkinson, Minnesota, to Huron, South Dakota, of potatoes, under your pro number 18; now, you had a freight expense bill for that movement, did you not?

A. We did, if it is shown there as a freight bill, yes.

Q. Then on May 7th from Baker, Minnesota, you show a similar movement of potatoes under pro No. 8.

A. That would mean that a freight bill had been issued for that, a freight bill of some kind.

Q. On May 13th you show two shipments from Hill City, Minnesota, to Huron, of potatoes, under pro 57 and pro 58.

A. That would mean that there were freight bills issued for those shipments.

Q. On May 15th you show a shipment from Hill City to Huron, of potatoes, under pro No. 71.

A. There would be a freight bill issued for that.

Q. Then you did issue freight expense bills prior to June 1 on the movements from Minnesota points to South Dakota?

A. On some movements from Minnesota points other than the Twin Cities to South Dakota. But very few, if any, from South Dakota points to Minnesota, as the products would probably be delivered, and in a number of cases were delivered prior to the time that the truck had ever come to the office in St. Paul. On the outbound shipments, where we would send a truck for a movement going to South Dakota, we definitely knew at St. Paul that that truck was going to go to that town; it would pick up a shipment to take to South Dakota, and consequently we could give them a blank freight bill, or a freight bill showing origin and destination, on which they could fill out the quantity; and we would have that record. But on shipments that would originate in South Dakota, where they would arrive at a certain point in South Dakota, and pick up a shipment, deliver it to a point

in Minnesota other than the Twin Cities, prior to the time that the truck arrived at our office in St. Paul, there would be no freight bill and no trip sheet to show for that; because the freight would be delivered and collected for before the empty truck came back to the terminal.

Q. And for those shipments, then, you did not have a bill of lading, freight expense bill, or any written record to show the movement; is that true?

A. For a number of shipments we have no such record.

Q. Except your oral testimony?

A. Right (p. 318-320).

[fol. 138] I hauled freight from South Dakota to Minnesota where no freight bills were issued. In the official docket of the I. C. C. at this hearing that docket contains an invoice which notes a number of shipments that were received by us and also a check which shows payment for freight hauled on the dates of April 5, April 7, two on April 8, two on April 10, one on April 11, and one on April 13, 1935. Consignor was Armour's Creamery, Mitchell, South Dakota, consignee was Armour and Company, South St. Paul. The date of the invoice in the I. C. C. file was April 13, 1935, and it refers to freight bill No. 188. We transported these shipments between that origin and destination and issued no freight bills to cover them. We were paid according to our invoice. The document shows that the ultimate destination of these shipments was Chicago, Ill. (pp. 339-342).

Q. Are you contending to this Commission that you made a large number of shipments from South Dakota into Minnesota north of highway 52 prior to June 1, 1935, and you have no records of those shipments; is that what your connection is here today?

A. I have not said anything as to the quantity that moved north of highway 52; but I am saying that there was a large number of shipments moved in the early part of our operation from South Dakota to Minnesota for which we have no freight bills or manifests, such as Exhibit No. 3. Very definitely I am making that statement.

By Exam. Peterson:

Q. Most of those shipments moved to the Twin Cities?

A. Most of the ones moving to the Twin Cities we had definite records of, because they came to our home terminal.

By Mr. Moore:

Q. Where your billing machinery is?

A. Where our billing office and office set-up is. The ones for which we did not have records are largely outside of our terminal; but even to the terminals in the Twin Cities here, we had many shipments for which there were no freight bills issued (p. 386-387).

[fol. 139] Redirect examination:

Q. What other operators are there operating between the Twin Cities and Sioux Falls?

A. Direct?

Q. Direct. First state those single lines and then those that are composed of more than one line.

A. By a single-line haul there is the Wilson Forwarding Company, Tri-State Transportation, and, of course, the applicant. And on a two-line haul there is the Stellar and the Wilson Transportation Company, and Rohweder and Hess. And there is some movement of freight into Sioux Falls by the way of Sioux City. The operators into Sioux City occasionally pick up a few small shipments and transfer it to the Buckingham Transportation at Sioux City.

Q. Then what interstate truck service into Sioux Falls is there by way of Sioux City from the east—Chicago and points east of Sioux City?

A. By the way of Chicago into Sioux City there's a large number of lines including James, and Christensen Brothers with the Sioux Transportation down there. There's a large number of them; I wouldn't attempt to name all of those. But those connect with the Wilson Transportation at Sioux City and the Buckingham at Sioux City and from there they move the freight on into Sioux Falls. (p. 436-437)

[fol. 140] By Exam. Peterson:

Q. You prepared an affidavit, stating that the original freight bills were in your office, did you not? They weren't submitted to the Commission informally; that is, they weren't retained by the Commission?

A. The first time—

Mr. Moore: The original freight bills?

Exam. Peterson: Yes.

A. As I recall it now, the first time that I went down there I submitted these lists, and they were checked through roughly. The recommendation was made and sent in to Washington. It was returned back out there for further checking. For what reason we don't know. But at that time I brought down additional documentary evidence to back up the exhibits that I had put in there. And it was kept in the file there. But when I asked for it at the I.C.C. preparatory to December 12 the file couldn't be located that contained them.

Q. Yes. But your affidavit indicates that you retained all the documentary evidence that you had in your own file.

A. You see, I was called down there about four or five times in informal hearing; maybe more than that. Several times Mr. Murphy was there at the same time, and he will recall it.

Q. Well, on January 25, 1938, you stated: "The attached lists are duplicates of information contained in the records in the office of the Northern Transportation Company. The originals will remain on file and can be verified at any time if desired."

A. Yes. (p. 776-778)

With reference to Exhibit 39 there was no actual change in the nature of my operation to the points involved during the time the tariff changes referred to in the exhibit were taking place. (pp. 747-748)

[fol. 141] The following witnesses, operators of freight motor common carrier lines, were called by protestants in the "grandfather" hearing.

Witness W. H. Rohweder, president Rohweder Truck Lines, Inc., Pipestone, Minn. I have been engaged in the truck transportation business since the spring of 1932 and operated in the eastern half of South Dakota, the north west corner of Iowa and the southwest corner of Minnesota. My principal business was interstate and I transported between Chicago and the territory mentioned. In 1935, I did not operate between the Twin Cities and South Dakota points. During 1935 on and prior to June 1, I operated from Chicago to South Dakota, Iowa and Minnesota, and I am very familiar with this territory. (p. 549, 550) I think I operated to practically all the points the applicant is now asking for prior to and since 1935. I have lived at Pipestone for 21 years. During all this period I constantly solicited

traffic in the territory involved. At that time I operated also between Pipestone and Sioux Falls. At that time I did not have any interchange at Pipestone for Twin City business. In connection with my operations I spent a lot of time in South Dakota in solicitation prior to June 1, 1935, and have made it my business to familiarize myself with the competition then existing. I handled a lot of business into Sioux Falls from Chicago and also into Sioux City. In 1932 and 1933 and from then on I solicited all the time. I believe I was in contact with all of the important shippers in that locality during that period. I went over the roads and highways in South Dakota in that territory. One week I spent in certain territory and the next week in another territory so that I kept up a continuous contact. I was the only solicitor. I cannot describe the designation used on the Northern trucks in 1935 because I didn't see any of them in that territory. I have seen trucks on the highway without any name on them. (p. 551-556) I would travel along U. S. 14 soliciting freight from town to town and along S. D. 34 at least twice a week. (p. 557). Between 1932 and 1935 there were very few interstate trucks serving that locality. From the last half of April to probably July 15, 1935 I was laid up. (p. 559)

Witness W. H. Rohweder, recalled. Under the assumption that the applicant operated in the South Dakota territory that I served to Chicago, I would be in competition with him. This for the reason that any Chicago interchange freight he received at the Twin Cities would naturally lessen the amount of freight I could haul direct from Chicago. During 1935 up until October 15th, excluding the period I was sick, I drove over all of the highways in that portion of Eastern South Dakota and solicited freight. I would be in South Dakota at least 4 days each week. I did not see any of applicant's trucks on the highways during that time. I [fol. 142] did not encounter any competition from Northern Transportation until early in the fall of 1935, and that was at Mitchell and Huron. I did not know he was in operation prior to September or October, 1935. I was in direct contact with the competition during all of that period. Referring to Exhibit 42, if those were the routes that applicant claimed to be operating over and providing a daily service he would require at least 12 to 16 semi-trailer units to provide that service. He would have to put on additional trucks to provide the irregular route service. If he used

straight trucks it would require 60 to 75 trucks to provide the service. I should say that it would take 20 to 22 trucks to take care of what would require 15 semi-trailer units. (p. 582-589)

Cross-examination:

The number of trucks it takes to serve a given territory depends on the volume of freight moving. My statement that it would take 12 to 16 semi-trailer outfits to serve the regular routes shown on Exhibit 42 is based on actual experience of operation in that territory, but I was not serving this South Dakota territory from the Twin Cities at that time. I have operated from the Twin Cities to this territory since that time. However, having no experience at that time I did not know what the volume was from the Twin Cities to that territory. (pp. 589-592).

Witness Wm. Wilson, residing at Sioux Falls, S. D. I have resided at Sioux Falls since Oct. 6, 1918. Prior to that I lived at Huron. I was born and have lived all my life in the State of South Dakota. I am president of Wilson Storage & Transfer Co., which is a motor carrier. I have been engaged in the motor carrier business in South Dakota since Oct. 6, 1925. I was issued permit No. 4 by the South Dakota Board and started to run between Sioux Falls and Brookings. That was in 1925. Prior to that I had been in the wholesale automobile business. (p. 692-694) I had been in the automobile business since Aug. 1, 1914. From Aug. 1, 1914 until June 1, 1915, I handled the Maxwell automobile and from June 1, 1915 until Jan. 1, 1931, I handled the Reo Motor Co. products. From that date to the present time I have handled General Motors products. During the periods I have mentioned I was the agent in South Dakota for those companies. For General Motors and Reo Motor Car Co. I was the agent for the entire State of South Dakota and portions of Western Minnesota and Northwestern Iowa. I started as a motor carrier in 1925, and had the run between Sioux Falls and Brookings. (p. 694-697)

Subsequent to 1925 and prior to Aug. 1929, I acquired other operations. The intrastate operations were south and west of Sioux Falls mostly and into the Rosebud territory. At that time there was competition. In 1928 I purchased a number of small operators in the vicinity of Sioux

Falls. The operations were conducted by Wilson Transportation Co. and I owned all of its stock. On Sept. 1, 1929 I sold all of my stock in that company to the Omaha Railroad. Except for a couple of months, I remained as manager of that company. (p. 698)

[fol. 143] I first started operations as Wilson Storage & Transfer Co. between Minneapolis and Sioux Falls in 1932. William Gould, our present agent at Minneapolis, started the run. Generally speaking, we have the same employes now that we started with. On Mar. 9, 1935, I acquired the motor carrier operation of J. W. Crabb, d/b/a Northwestern Transportation Co. Generally, he operated between Huron and Aberdeen, Huron and Sioux City, Huron and Minneapolis, Huron and Miller and Huron and De Smet. He provided a daily service. I bought all of his certificates, interstate and intrastate, at that time. I also bought his equipment which consisted of 16 units. They were all road haul units except for a few pickup trucks (p. 698-702). I also took over Mr. Crabb's office at Huron and retained him in my employ as agent at Huron until Sept. 1, 1935. Mr. Styer was working for Crabb when I took over the latter's operation. He was the solicitor at Minneapolis. He continued in my employ from Mar. 9, to Apr. 1, 1935. During that time he was our solicitor at Minneapolis and had charge of our operations from the Twin Cities to the territory in and around Huron (p. 702-704). He solicited generally. (p. 704).

I am familiar with the routes and points which the applicant seeks to serve under grandfather rights in this proceeding. I have examined exhibit 42 and now have it before me. The applicant has testified that he serves this territory and has served it with an overnight service without change or transfer of freight. This would be impractical and almost impossible. Taking the regular routes and using the shortest mileage possible, if semi-trailers are used from Minneapolis to Brookings and from Minneapolis to Sioux Falls and then transferring the freight to other trucks at those 2 junction points, which would be the practical way of handling it, then applicant's mileage on the regular routes would be 1926 miles daily. Based on our own operation, to give that service would require 12 trucks. That would be an average of 160 miles per day for each truck, which is a maximum according to our experience of servicing towns (p. 706-708).

If in addition to the regular route service to which the applicant has testified, it be assumed that the applicant also furnished irregular service in the other territory shown on Exhibit 42, there is no way in which to determine the exact number of additional trucks it would take to provide this service. This because these towns are so widely scattered and lie outside the area of the regular routes. It would be impracticable with the tonnage available to even attempt to serve them from the Twin Cities (p. 710-711). On June 1, 1935 and subsequent thereto the points in the irregular route territory which are shown on Exhibit 42, were served by regular route operators (p. 711-712). We served the majority of these points and other carriers serve those we do not serve (p. 712).

[fol. 144] Exhibit 46 is an abstract of freight expense bills covering freight originating at various points in Illinois and Minnesota which were transported by the applicant from the Twin Cities to Huron and there interchanged and turned over to Wilson Storage & Transfer Co. I have the bills here in support of this exhibit. At the upper left hand corner of the exhibit the year should be 1935 instead of 1938. In other words, all of the shipments shown on the exhibit were interchanged with Wilson Storage & Transfer Co. or Wilson Transportation Co. prior to June 1, 1935, or prior to June 30th. Referring to Exhibit 3 under date May 27, covering a shipment moving from the Twin Cities to Chamberlain, pro number 170, no interchange is indicated. Reference to Exhibits 47 and 48 will indicate that that shipment was transported by the applicant to Mitchell and there turned over to Wilson Companies and that the latter delivered them to Chamberlain (p. 713-716).

Exhibit 49 is an abstract of freight expense bills showing transfer of freight from applicant at Huron to Wilson Storage & Transfer Co. between July 29 and Oct. 31, 1938. I have the original bills containing the consignee's signature for each of the shipments shown on this exhibit (p. 719, 720). On Exhibit 4 there is an item that indicates the purchase of meals at the Rushmore Cafe at Sioux Falls during April and May, 1935. At that time there was no Rushmore Cafe at Sioux Falls. The Rushmore Cafe did not open at Sioux Falls until Mar. 16, 1936 (p. 724).

Cross-examination:

I am interested in this proceeding by virtue of my operation from the Twin Cities to Sioux Falls conducted on June 1, 1935. That was a motor vehicle operation. I was conducting both a pool car and a motor vehicle operation at that time. We ran trucks practically every day. During April, May and June, 1935, we had our own trucks operating between Sioux Falls and Minneapolis and also had a pool car operation from St. Louis to Sioux Falls. We handled merchandise for J. C. Penney & Co. for 57 stores, 1 of which was in Minneapolis. On the days we didn't operate our own trucks we gave this Penney freight to Tri-State Transportation Co. During that period we did not operate by truck every day from Sioux Falls to Minneapolis. We only had equipment enough to operate about 4 days a week (p. 724-726).

My assumption that 12 trucks would be required to operate applicant's regular routes was based upon a transfer from semi-trailers to trucks at Sioux Falls and Huron. I never heard of an operation being carried on where they would run the trucks through Huron and Mitchell into other points. We do not do it that way. There are what are [fol. 145] called "skimmers" who may operate in that manner. They do not make door to door delivery but just hit the high spots. In other words they leave the small communities to themselves and pay no attention to any service to them. I have never operated a railroad and I do not operate my truck line like the Omaha operates the railroad. I am not a railroad truck operator. I am still president of Wilson Transportation Co. and also owner of Wilson Storage & Transfer Co. That company uses Wilson Forwarding as a trade name. I presume there are many differing ideas as to what constitutes the best practical method of handling equipment and I gave only my own views (p. 726-728). In the regular territory points west of Mitchell and Huron my trucks serve a majority of them daily. In June, 1935, we operated probably 3 to 4 days a week. We did not skim the top off the business and hit the high spots but served every town. We have a peddle truck out of Huron that makes each town on the days it operates. It hauls the freight out and picks up butter, eggs, cream and whatever they have on the back haul. That is all done during the daytime to give each community a chance to get rid of the

merchandise they have for eastern markets. We followed that system in 1935 but did not actually serve those points every day (p. 728, 729).

Redirect examination:

The Montgomery Ward store in Sioux Falls opened Nov. 30, 1938 (p. 730).

Exhibit 50 covers shipments interchanged between Northern Transportation Co. and Wilson Transportation Co. at Mitchell, S. D. for points beyond, as indicated on the abstract between July 30, 1938 and Oct. 30, 1938 (p. 733). Exhibit 51 is an abstract of freight expense bills showing the interchange between Northern Transportation Co. and Flamming Motor Express, Inc. at Mitchell, S. D. for points beyond from Aug. 1, 1938 to Nov. 1, 1938. The exhibit shows the Northern and Flamming pro numbers and the destination and point of origin. The delivery in each instance was made by Flamming (p. 734, 735). Exhibit 52 is an abstract of freight expense bills showing the interchange of freight between Northern Transportation Co. and Flamming Motor Express, the pro number, the point of origin, the destination and the point of interchange and that Flamming made delivery in each instance (p. 735, 736). This exhibit starts with July 3, 1936 (p. 736). Exhibit 53 is an abstract of freight expense bills showing interchange of freight between Northern Transportation Co. and W. J. Flamming, d/b/a Flamming Motor Express, Tyndall, S. D. and covers the period Apr. 2, 1936 to June 24, 1936, and shows the Northern pro number, point of origin, destination and point of interchange. Delivery to points beyond Mitchell was made by Flamming (p. 737, 738).

[fol. 146] The following witnesses, former employees of defendant Styer, were called by protestants in the "grandfather" hearing.

CLOYD HUGHES, truck driver for Wilson Storage & Transfer Co. and residing at Minneapolis, Minn. At one time I was employed by C. W. Styer, d/b/a Northern Transportation Co. I started to work for Styer the first week in April, 1935. I drove truck for him between Huron and Minneapolis. I continued to work for Mr. Styer until about April 1, 1936. I drove truck for him from April

to July 1, 1935. Between July 1, 1935 and Jan. 1, 1936, I was his agent at Huron. After Jan. 1, 1936, I again drove truck for him until April, 1936. (p. 595-598)

When I started to work for Styer, Walt Shaw was the only other driver he had. When I started to work for him he had 1 truck that operated between Minneapolis and Huron. Eventually it went to Mitchell, but for the first few days he did not go to Mitchell. During the period he had the one truck both Mr. Shaw and I would drive it. At the start we operated 2 or 3 times a week. Shaw and I were both on the same truck. We would leave Minneapolis in the evening and go to Huron. The next day in the evening we would return from Huron to Minneapolis. We served Brookings, Mitchell and Huron. We might have had a few little shipments to the towns on this particular route between Brookings and Huron. The only route that was operated was that between Brookings and Mitchell via Huron. During that period he had 1 truck and I drove it myself. He continued with 1 truck for a week and a half or two weeks after April 1, 1935. During that time Mr. Shaw and I were the only drivers. The one truck was a GMC-T-26, straight job, and the truck he got after about two weeks was a Ford V-8, straight job. After he acquired the Ford truck we continued to operate between the Twin Cities and Mitchell via Huron. We did not operate it daily because about that time we started to haul frozen eggs from Mitchell to South St. Paul. During that time I solicited business at Huron and Mitchell. During the time we were hauling the eggs from Mitchell I operated some over the regular route. Shaw also hauled eggs at that time. During that time we used an extra man and the three of us alternated in hauling the eggs and driving over the regular route. In hauling the eggs from Mitchell sometimes we would go over U. S. 16 through Sioux Falls and sometimes we would come back through Howard and Brookings. During that period there was no movement eastbound over U. S. 16 to Mitchell. Neither my truck nor the other trucks operated eastbound through Sioux Falls to Mitchell. The egg movement was discontinued early in May, 1935. (p. 599-605)

After the egg movement was discontinued we continued [fol. 147] to operate between Minneapolis and Brookings and Huron. That was the only route we operated over.

At that time Wendell Nelson replaced Walt Shaw as a driver. Walt Shaw quit around May 1st, and he now lives in Huron. I think he has made his home mostly in Huron since that time. It was May 1st, 1935 that Shaw quit. After Nelson came we continued to operate through Brookings and Huron to Mitchell. As long as I continued as a driver that was the only route we operated. While I was driving I stopped at Styer's terminal in the Twin Cities and I was in Huron about every day. During the time that I was driving he had a couple of other men, one of them named Barnes. He worked about 2 weeks. Prior to July 1, 1935 he had another man named Dice. He was mostly a pickup man in Minneapolis but he did make a few trips to Huron. Up to July 1, 1935, other than Nelson Bryant — driver between Huron and Mitchell. He started about May 1, 1935. While he was operating between Huron and Mitchell, I did not operate as far as Mitchell. I brought the freight into Huron and it was transferred to Bryant's truck and taken to Mitchell. He was then using the truck that I originally used when I started to operate between the Twin Cities and Mitchell via Huron. About the first of June the Ford truck was discontinued and we had 2 tractor trailer outfits. (p. 605-611)

When I quit actually driving on July 1, 1935, they were using the 2 tractor trailer outfits on the route between Brookings, Huron and Mitchell. That is they operated as far as Huron and the straight truck took the freight to Mitchell. Those were the only trucks I saw being operated. Up to July 1, 1935, the operation between the Twin Cities and Mitchell via Brookings and Huron was the only one I saw being conducted. (p. 611) Up until July 1, 1935 all of the freight transported to Huron for Mitchell was transferred to Bryant's truck and he took it to Mitchell. I did not operate between Huron and Mitchell and I did not see Nelson operate between these points. Mr. Bryant was there for the purpose of taking the freight from Huron to Mitchell. (p. 612) When I was agent at Huron Bryant made a trip between Huron and the Minnesota-South Dakota state line on U. S. 14. That was because we didn't have enough equipment and Mr. Styer had one trailer which did not have South Dakota compensation plates and so we had to use the straight job to haul the freight from the state line into Huron. The truck

that brought the freight down from Minneapolis transferred its load to Bryant's truck at the state line and he took it into Huron. After he disposed of the Huron freight he took the remainder to Mitchell. (p. 613, 614)

When I became agent at Huron on July 1, 1935, there were 2 tractor trailer outfits being used on the route between the Twin Cities and Huron. Bryant continued to take the Mitchell transfer from Huron until after I went back driving on Jan. 1, 1936. (p. 614, 615) While I was agent at Huron between July, 1935 and Jan. 1936, I was in charge of the terminal and I solicited and took care of the [fol. 148] business. We didn't need any dispatching because we only had the one route. I was there when the truck came in and I always got a manifest showing the number of shipments and the collection. When I went to Huron Mr. Styer told me to take full charge and do as I seen fit to improve our business. (p. 616, 617)

Between July 1, 1935 and Jan. 1, 1936, I was at Huron. Other than Mr. Bryant I was the only employe there. Bryant ran between Huron and Mitchell every day and then there was a delivery boy named Needham who took care of the pickup and delivery at Huron and he worked under my orders. I did not solicit any business on any other route than that between Brookings and Mitchell via Huron. Mr. Styer would come to Huron from time to time. Up to Sept. 1, 1935, he would be there maybe once a month and would consult me about solicitation in that territory. He did not instruct me to solicit business for any other route than to Mitchell and Huron. (p. 618-621)

After I quit driving in July, 1935, I was succeeded by Clifford Beltz. He was from Minneapolis and he is still there. Needham is in Huron. He worked for Styer until the middle of February, 1936. When he left I was driving a truck again. After that time I drove to Huron and sometimes to Sioux Falls. The first load I took to Sioux Falls was some time after Jan. 1, 1936. (p. 621, 622)

During the time I was in charge at Huron I do not believe I went up to the terminal in St. Paul but I was in touch with the office through correspondence. The truck drivers that operated via Huron stopped there because that was the end of the line. The freight was taken from Huron to Mitchell by Mr. Bryant. (p. 623-626) Between April and July, 1935, we would make a trip from the Twin

Cities to Huron and then return. Sometimes we would come through Brookings direct and sometimes via Marshall to Brookings. (p. 630) After reaching Brookings we would go directly on U. S. 14 into Huron and then on S. D. 37 to Mitchell. That was only during April, 1935. In May and June, 1935, we used the same road. That was our only regular route and the only one we operated over until July 1, 1935, except the special egg movement out of Mitchell in April and May, 1935. We may have made 1 or 2 trips to Pierre. During that period we transferred freight at Huron for Pierre to Wilson Forwarding. We would leave the Twin Cities at 7 or 8 o'clock in the evening and arrive in Huron between 6 and 8 o'clock the next morning. The Mitchell freight would be transferred and reach there between 11 A. M. and 2 P. M. That was the usual running time during the period between April and July, 1935. At Huron we used a trailer for pickup. We didn't have no more trucks but after we got rid of the [fol. 149] Ford we had the trailer and this T-26. Between June 1 and July 1, 1935 the truck would tie up at Huron all day. Then it would leave that night and arrive in the Twin Cities the next morning between 5 and 7 o'clock. When I drove to the Twin Cities on that trip I would go off duty until that evening. (p. 631-634) Between April 1 and July 1, 1935, Nelson and I were the only drivers. That is except those that were on the egg movement. When I would be in the Twin Cities, Nelson would be in Huron. When I was in the terminal I never saw any other drivers, that is between April and July, 1935, and Styer had no other trucks. (p. 635)

I would help load the trucks at the Twin Cities and would probably be around the terminal an hour and a half or two hours before I left. There were a couple of trips to Pierre some time in June and there was a trip to Parkston in the fall of 1935. I was the agent at Huron at that time. There was difficulty that was reported to me in connection with that trip but I think Mr. Styer took care of that deal directly. (p. 635-637)

I went back driving Jan. 1, 1936 and continued until approximately Apr. 1, 1936. During that period we were hauling all over from Huron. We sometimes operated out of Huron and clear around the loop to Mitchell and Sioux Falls and back into Minneapolis and sometimes the other

way around. If we had to, we would go to Sioux Falls first and then to Huron. It was mostly to Huron and then to Mitchell because at that time we were hauling a lot more freight to Mitchell than we were to Sioux Falls. That was the only route that was being operated during that period. (p. 637, 638) When we went to Sioux Falls first we would have Huron freight on the truck and take it around by Mitchell. We generally had Mitchell freight too. Our schedule varied. Sometimes we would get into Mitchell early in the morning and sometimes later, depending on the time we left Minneapolis. At that time we had an agent at Sioux Falls and we would unload the Sioux Falls freight and then go on to Mitchell. We would get in to Mitchell between 3 to 10 o'clock in the morning and into Huron about noon. When we operated to Sioux Falls via Huron and Mitchell we would get into Sioux Falls about noon. During this time that I was driving trips were made to Sioux Falls over both routes. I quit driving about Apr. 1, 1936. During the period July 1, 1935 to Jan. 1, 1936 we transferred freight at Huron for Sioux Falls to the Great Northern Transportation, which was running into Sioux City at that time. They hauled general freight out of Sioux City up into South Dakota. During the period that I was driving prior to June 1, 1935, I did not haul any freight to points not on the route between Brookings and Mitchell via Huron unless it was the load to [fol. 150] Pierre. (p. 639-642) Prior to June 1, 1935, I did not haul any freight to Yankton, Armour, Stickney, Geddes, Lake Andes, Vermillion or Chamberlain. (p. 642, 643)

When I started to work for Mr. Styer I was a truck driver between Huron and Minneapolis. At that time he was running between Huron and Minneapolis and that is where I was employed. I lived at Huron at that time. I never worked in the office at Minneapolis. Mr. Styer took care of the office himself for a while. There was nobody else in the office for quite a while. Mr. Shaw was the first truck driver to be employed by him and he and I worked together. We were the only truck drivers for quite a while. While we were hauling these eggs we had 2 or 3 extra drivers. The third man was there and he doubled up on the truck and operated to and from Minneapolis. We only had 2 trucks at the time we started

hauling eggs during the latter part of April 1935. (p. 643-645)

I started to work for Styer a little after Apr. 1, 1935. Mr. Shaw had made one trip prior to that time and I accompanied him on his second trip. Mr. Shaw and I continued to be the only drivers operating between the Twin Cities and Huron and Mitchell until the middle of April when we started moving the eggs and then Styer hired some relief drivers to help us. Other than hauling a little freight into Huron and Mitchell, the work of these relief drivers was confined to the hauling of eggs. We finished the egg movement about May 1, 1935. Then we started to operate between the Twin Cities and Huron again as we had previously. Mr. Shaw quit about May 1, 1935 and Mr. Nelson took his place. Mr. Nelson and I were the only 2 road drivers until I quit the road. Mr. Dice, a relief driver, may have made a Sunday trip during that period. (p. 645-648)

I did not go in the office until after July 1, 1935. I was then stationed at Huron. Mr. Bryant came about May 1. He operated between Huron and Mitchell and did not come into the Twin Cities at all. During the period until I quit the road, which was on July 1, 1935, Mr. Nelson and I were the only 2 drivers operating between the Twin Cities and Huron. We only had 2 trucks operating on the road in this regular route and Mr. Nelson was the head driver on one and I was the head driver on the other. (p. 648-649)

Cross-examination:

On July 1, 1935, Mr. Styer was operating 3 trucks on the highway. I consider a tractor and trailer as one unit. He had one straight job and two tractor trailers. At the time we hauled the eggs during the early part of April he had two trucks, two straight jobs, and the last load or two he had a new tractor trailer. On June 1, 1935, [fol. 151] he had the same units. He might have had a straight job pickup to Minneapolis before July 1, 1935 but it wasn't licensed for road work. He had 3 trucks that he was operating on June 1, 1935, and the same on July 1, 1935. (p. 649-652)

When I was driving I left Minneapolis at 7 or 8 o'clock at night. We came to Huron. I would stay in Huron all day and return to Minneapolis the following morning. I stayed in Minneapolis until I reported back for duty at about 6 or 7 in the evening. That procedure continued from about April 1 to July 1, 1935. During that period I was acting solely as a truck driver. I would be in Minneapolis every other day. I would be there for an hour or 2 in the morning and an hour or 2 in the evening, that is, at the terminal. Mr. Styer was running the business and owned and managed it. (p. 652-654) I did not have exact knowledge of every pound of freight that went out of the terminal. I knew about the shipments on my own truck. Mr. Styer drove a truck on one or two of the trips hauling eggs. I remember his making 1 trip. (p. 656)

At the present time I am working for Wilson Storage & Transfer Co., which is the same as Wilson Forwarding Co. I have worked for Mr. Wilson two years, it will be three years in September. That employment has been continuous. I don't know as I ever talked to Mr. Wilson about my testimony here. Last Friday he told me he would like to have me come up and testify as to what I knew about the deal. That was the first time I ever talked to him about it. Prior to that time I had not talked to any member of the Wilson organization about testifying here. Last Friday Mr. Wilson told me about this hearing. He wanted me to come down and tell them what I knew about the operation of the Northern Transportation Co. I was in Huron last week on Friday and Saturday. Bryant and Nelson were there at that time. I saw Mr. Wilson in Huron on Friday. I talked to Mr. Wilson in the presence of these other drivers at that time. Mr. Newcome was there at that time and the other drivers were asked if they would come and testify to the operation of Northern Transportation. At the meeting in Huron we did not go over what we would testify to here today. (p. 657-663)

I do not know when the Great Northern Transportation Co. commenced operations from Huron south. During the summer of 1935 when I was agent was when the Great Northern interchanged shipments with Northern Transportation at Huron and hauled it to Sioux Falls. That would be between July 1, 1935 and Jan. 1, 1936. There

might have been some of these shipments interchanged prior to July 1, 1935. (p. 664) So far as I know, this interchange was made after July 1, 1935. (p. 665)

[fol. 152] We followed just two routes in coming to Brookings, Huron and Mitchell from Minneapolis. When we were hauling the eggs we followed U. S. 16 through Sioux Falls to South St. Paul. At that time Styer was not giving daily service. The irregular routes we were talking about had not been established at that time. I don't know how often we had shipments to the intermediate points between Brookings and Huron but they came along eventually. You are handing me Pro 652. My name is on there but that is not my signature. I did not deliver any shipments to Sioux Falls on June 29, 1935. My handwriting does not appear upon this pro number. (p. 665-668)

The eggs movement was between the middle of April and the last of April, 1935. There may have been 1 or 2 loads hauled during the very first days of May. Going in we sometimes went via Sioux Falls. That is, we transported the eggs from Mitchell via Sioux Falls to Minneapolis. Sometimes if we had anything we would bring a load of merchandise on the way back and if we didn't we would run empty. We came back over U. S. 14 into Brookings. I don't know whether we had a dock or terminal at Brookings at that time or not but we did later. We had a garage at Huron. There was a mechanic there that took care of the trucks when there was work to be done. Prior to June 1, 1935, I did not come from Minneapolis through Sioux Falls with merchandise. We did not necessarily have two men on each truck. I would say that once in a while he would give us a helper and lots of times we ran alone. (p. 668-672)

WITNESS FRANCIS W. BRYANT, residing at Huron, S. D. I have lived there since 1921. I was employed by the Northern Transportation Co. conducted by Mr. Styer in the year 1935. I started to work for him along in May 1935, about the middle of May. I worked for him until March, 1936. During the time I worked for him I hauled freight between Huron and Mitchell. I made no trips into the Twin Cities except that I would ride in once in a while with the driver on week ends. I made no other trips, ex-

cept between Huron and Mitchell. That was the situation from the day I started until June 1, 1935. (p. 676-679) That continued to be the situation as long as I worked there. Between May and June 1, 1935, Wendell Nelson and Cloyd Hughes were the drivers operating to Huron that I exchanged freight with. They were the only drivers I ever interchanged freight with at Huron between the time I started in May, until June 1, 1935. Between the time I started and July 1, 1935, Hughes and Nelson were the only drivers that transferred freight to me at Huron. I took all that freight to Mitchell. I did not transport it to any other points. After July 1, 1935, there was a driver named Beltz. Hughes was the foreman in Huron after July 1, 1935. He distributed the freight loads around [fol. 153] Huron. After July 1st I made a trip down to Parkston on 2 occasions. I don't remember the exact dates or the months but it was in 1935. (p. 679-681) Something happened in connection with that trip. We got picked up going down there. A State man from the Railroad Commissioners stopped us. We weren't supposed to be down there. We didn't have the town listed in the tariff. (p. 681-683)

Nelson was driving until February, 1936, and I don't remember how long Beltz was there. When Hughes returned as a driver in January, 1936, I don't believe Beltz was still there. I think there was a driver on then named Walter. Up to July 1, 1935 the only drivers were Hughes and Nelson. After July 1, 1935 the drivers were Beltz and Nelson. When we started operating there were 2 trucks, 1 was a tractor trailer and the other a 26 GMC. At first I operated the Ford and then I got the GMC truck. That was used instead of the Ford. The Ford was allowed to stand at Huron and was not used. Between that time and July 1, 1935 there was a T-18 tractor trailer and a 33 GMC and trailer. There were 3 units and that was all I saw operated into Huron. That was right after I started working for him. I never operated any place but to Mitchell from Huron except the trips to Parkston that I had mentioned. (p. 683-685)

Cross-examination:

I am not working now. I last worked for Haley-Neely at Huron. I talked to Mr. Wilson last Friday. I am to

receive my expenses but no wages. I am certain that the only times I went to the Twin Cities was on week ends. On those trips I would drive part of the way. I testified with great exactness what happened prior to June 1, 1935. I have no definite recollection about specific dates. (p. 685-687)

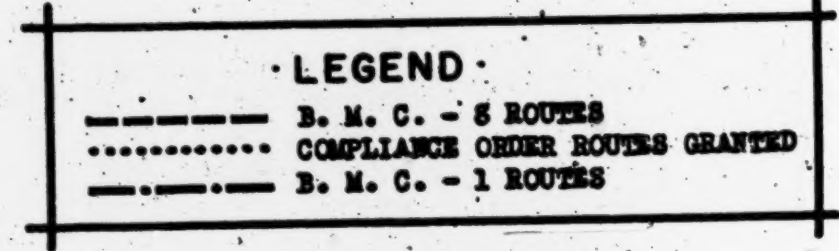
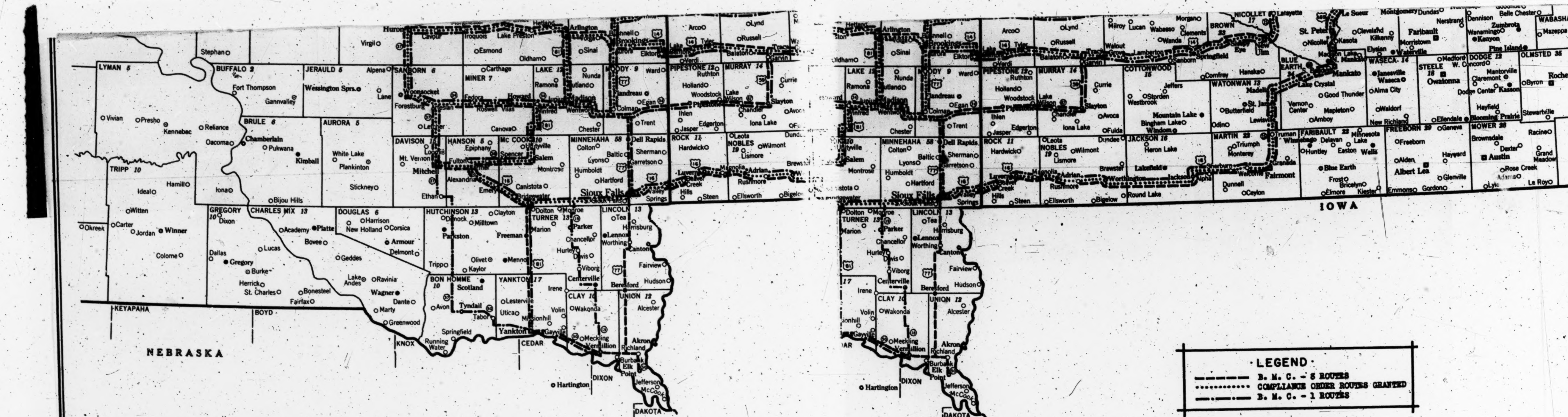
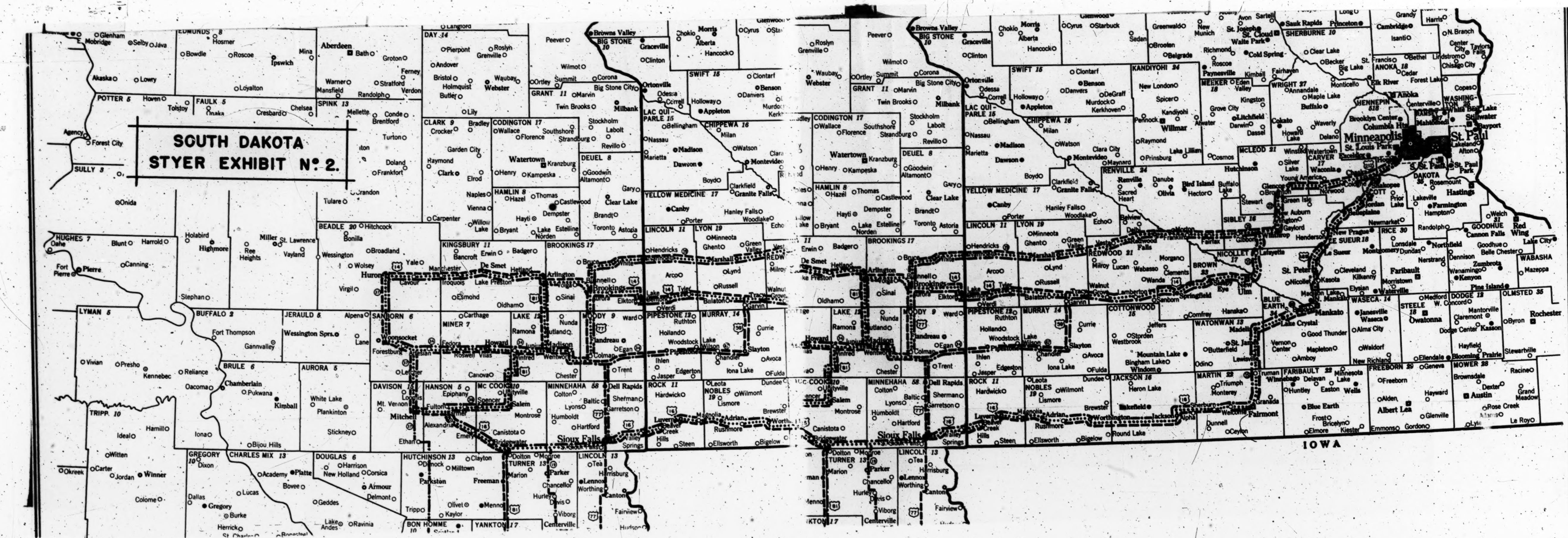
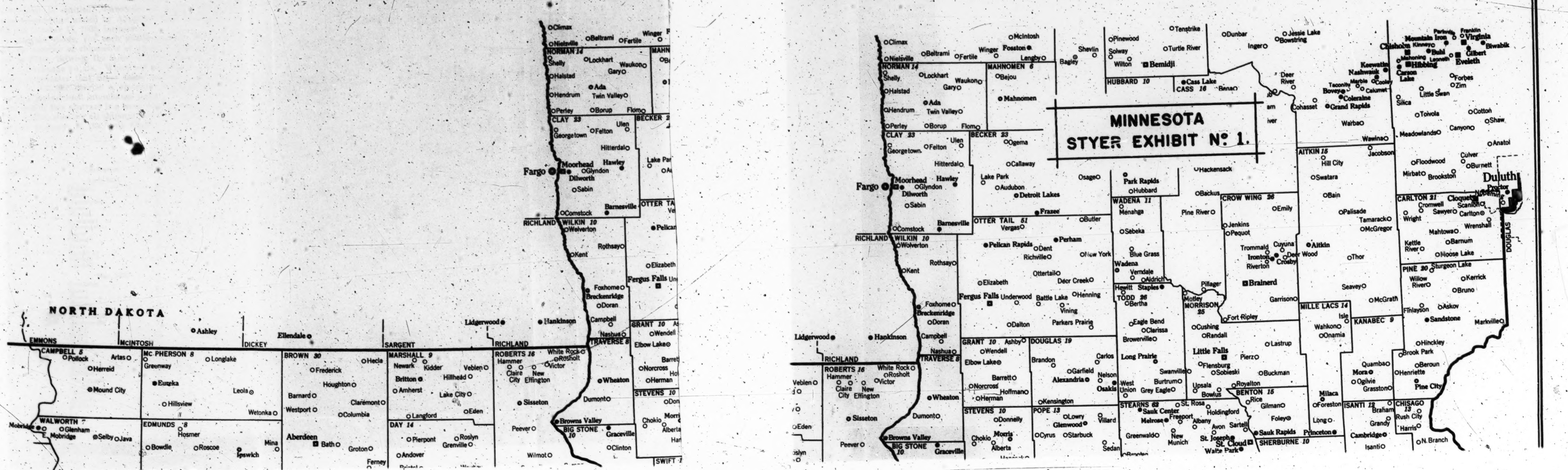
Redirect examination:

I worked for Mr. Styer from May, 1935 until the middle of March, 1936. All I did was to operate between Huron and Mitchell except 2 week end trips to Minneapolis. (p. 687)

WITNESS WENDELL NELSON, residing at Huron, S. D. I have lived in Huron about 14 or 15 years. I worked for Northern Transportation Co. during the years 1935 and 1936. I started about May 1, 1935 and continued until February 1, 1936. On May 1, 1935 I started driving out of Minneapolis to Huron. I succeeded Walter Shaw. He lives in Huron now. My run was from Minneapolis to Huron. I transferred Mitchell freight to Bryant at Huron. I continued to operate between Minneapolis and Huron and no other place until in the fall of 1935. Between May 1, 1935 and the fall of 1935 I operated exclusively between [fol. 154] Minneapolis and Huron. The route was through Brookings to Huron. I did not make a trip to Sioux Falls prior to Sept. 1, 1935. This trip was in November, 1935, just before the Montgomery Ward store opened. I made one trip through Sioux Falls in Sept. 1935 and got a load of iron beams at the Washington High School. That was second hand steel that I picked up at Sioux Falls and took to St. Paul. I did not make another trip to Sioux Falls until November of that year. (p. 688-690)

Between May 1 and June 1, 1935, Cloyd Hughes was the only other driver between Minneapolis and Huron. That situation continued until July 1, 1935, when Hughes went to Huron as agent. While he was at Huron he solicited business and took care of things there. Clifford Beltz replaced him as driver. I do not know how long Beltz continued to operate over that run. There were no other drivers other than Hughes and myself between May 1 and July 1, 1935 over that run. (p. 690-691)

(Here follow 1 map, Styer Exhibits 1 and 2, folio 155)



[fol. 156] ABSTRACT OF STYER EXHIBIT No. 3

This exhibit is entitled: "Abstract of Freight Bills Showing Shipments Carried by Applicant Between April 1, 1935 and October 15, 1935, inclusive."

This abstract shows, for each month covered by the exhibit, the number of shipments of general commodities carried by Styer between the listed origins and destinations or interchange points. Where an interchange point is shown it indicates that Styer there received from or delivered to another carrier a shipment originating or terminating beyond such interchange point.

At the end of this abstract is a more detailed statement from the exhibit showing all shipments to or from Minnesota points, exclusive of the Twin Cities.

[fol. 157]

Origin	Destination	Number of Ship- ments	Interchange Points
April, 1935			
Minneapolis	Mitchell	7	
St. Paul	Huron	6	
Mitchell	Minneapolis	5	
Minneapolis	Huron	17	
Minnesota Transfer	Mitchell	1	
Minneapolis	Brookings	4	
Huron	Minneapolis	6	
Akron, Ohio	Huron	2	St. Paul
Mitchell	Chicago	2	St. Paul
South St. Paul	Huron	3	
South St. Paul	Brookings	2	
St. Paul	Mitchell	1	
South St. Paul	Mitchell	1	
May, 1935			
Minneapolis	Brookings	7	
Minneapolis	Huron	78	
Atkinson	Huron	1	
South St. Paul	Huron	5	
Minneapolis	Mitchell	22	
Mitchell	Minneapolis	11	
Huron	Minneapolis	13	
Baker	Huron	3	
Hill City	Huron	6	
St. Paul	Huron	37	
Huron	St. Paul	4	
Minneapolis	Pierre	3	Huron
Minneapolis	Madison	1	
St. Paul	Woolsey, S. Dak.	1	Huron
St. Paul	Mitchell	23	
Madison	Minneapolis	2	
La Porte	St. Paul	1	
Huron	White Bear	1	
Chicago	Mitchell	1	
Chicago	Huron	1	

Origin	Destination	Number of Shipments	Interchange Points
May, 1935			
Chicago	Pierre	1	St. Paul-Huron
Minneapolis	Aberdeen	1	Huron
Minneapolis	Forestburg, S. Dak.	1	
St. Paul	Miller	1	
Akron, Ohio	Mitchell	2	St. Paul
Mitchell	St. Paul	4	
South St. Paul	Brookings	3	
Mitchell	South St. Paul	1	
Akron, Ohio	Huron	1	St. Paul
St. Paul	Brookings	1	
Minneapolis	Chamberlain	1	
Mitchell	New York, N. Y.	1	St. Paul
South St. Paul	Wessington	1	Huron
Miller	South St. Paul	1	
Minneapolis	Iroquois	1	
Minneapolis	Highmore	1	Huron
Marshfield, Wis.	Highmore	1	
Green Bay, Wis.	Huron	1	Huron
Marshfield, Wis.	Wessington	1	
[fol. 158]			

June, 1935			
Minneapolis	Redfield	1	Huron
Minneapolis	Huron	117	
Minneapolis	Mitchell	50	
St. Paul	Huron	69	
St. Paul	Mitchell	54	
Mitchell	New York	2	St. Paul
Huron	Minneapolis	10	
Mitchell	Minneapolis	8	
Akron, Ohio	Huron	7	St. Paul
Akron, Ohio	Sioux Falls	2	St. Paul
Mitchell	St. Paul	11	
Huron	St. Paul	13	
Oshkosh, Wis.	Huron	1	
Minneapolis	Brookings	14	
Minneapolis	Wessington	1	
South St. Paul	Brookings	2	Huron
Minneapolis	Pierce	1	
St. Paul	Lake Preston	1	Huron
South St. Paul	Onida	1	
Akron, Ohio	Chicago, Ill.	3	St. Paul
Chicago, Ill.	Mitchell	1	St. Paul
Sioux Falls	St. Paul	1	
Minneapolis	Iroquois, S. D.	3	
St. Louis	Huron	1	St. Paul
Mitchell	Chicago	13	St. Paul
Mitchell	St. Paul	1	
Grand Rapids, Minn.	Huron	1	St. Paul
Redwood Falls, Minn.	Huron	1	
South St. Paul	Huron	3	
St. Paul	Marshall, Minn.	1	
Huron	Mitchell	1	St. Paul
Chicago	Huron	1	Huron
Minneapolis	Wessington Springs	1	St. Paul
Buffalo	Huron	1	St. Paul
New Haven, Conn.	Huron	1	
Wallace, S. Dak.	St. Paul	1	
Akron, Ohio	Mitchell	2	St. Paul
Minneapolis	Madison	1	
Mitchell	Chicago, Ill.	1	St. Paul
Huron	Marshall, Minn.	1	

Origin	Destination	Number of Ship- ments	Interchange Points
June, 1935			
on, Ohio	Huron	1	St. Paul
by, Ohio	Mitchell	1	St. Paul
by, Ohio	Brookings	1	St. Paul
Paul	Yankton	1	
waukee	Vermillion	1	St. Paul
on, Ohio	Yankton	2	St. Paul
neapolis	Sioux Falls	1	
July, 1935			
ron	Minneapolis	21	
Paul	Mitchell	62	
nasha, Wis.	Huron	1	St. Paul
neapolis	Huron	145	
Paul	Huron	78	
neapolis	Iroquois, S. Dak.	5	
neapolis	Brookings	16	
neapolis	Mitchell	43	
Paul	Madison	1	
ron	St. Paul	12	
uth St. Paul	Huron	8	
ron	Marshall, Minn.	3	
l. 159]			
itchell	St. Paul	12	
ilwaukee	Huron	1	St. Paul
Paul	Brookings	6	
itchell	Minneapolis	9	
elby, Ohio	Huron	2	St. Paul
kron, Ohio	Huron	8	St. Paul
neapolis	Arlington, S. Dak.	1	
uth St. Paul	Highmore, S. Dak.	1	
uffalo	Huron	1	
itchell	Chicago	6	St. Paul
ansfield, Ohio	Mitchell	1	St. Paul
elby, Ohio	Mitchell	1	St. Paul
neapolis	Wessington Springs	1	
Chicago	Huron	3	St. Paul
kron, Ohio	Howard, S. Dak.	1	
neapolis	Howard, S. Dak.	1	
kron, Ohio	Canton, S. Dak.	1	St. Paul
Minneapolis	Yankton	1	
Mitchell	St. Louis Park	1	
Wilkes Barre	Huron	1	Huron
Minneapolis	Chamberlain, S. Dak.	1	Mitchell
Eau Claire, Wis.	Huron	2	St. Paul
St. Paul	Wessington Springs	1	Huron
Akron, Ohio	Mitchell	3	St. Paul
Akron	Miller	1	St. Paul-Huron
St. Paul	Dawson, Minn.	1	
Minneapolis	Madison	1	
Fairfield, Conn.	Huron	1	St. Paul
Eau Claire, Wis.	Mitchell	1	St. Paul
Sioux Falls	St. Paul	1	
St. Paul	Elmore, Minn.	1	
Madison	Minneapolis	2	
Minneapolis	Pierre	1	Huron
Rockford, Ill.	Huron	1	St. Paul
Huron	Appleton, N. Dak.	1	
Bloomer, Wis.	Huron	1	St. Paul
Huron	St. Louis Park	1	
Minneapolis	Miller	1	

Origin	Destination	Number of Ship- ments	Interchange Points
August, 1935			
Huron	Minneapolis	34	
St. Paul	Huron	121	
Minneapolis	Huron	147	
Minneapolis	Mitchell	43	
Eau Claire, Wis.	Huron	6	St. Paul
Akron, Ohio	Huron	2	St. Paul
Minneapolis	Brookings	16	
St. Paul	Mitchell	69	
Minneapolis	Pierre	1	Huron
St. Paul	Brookings	9	
Mitchell	Minneapolis	8	
Huron	St. Paul	8	
St. Paul	Wessington Springs	2	Huron
Dodge Center, Minn.	Huron	2	
Brookings	Minneapolis	2	
Huron	Chicago	11	St. Paul
Duluth	Mitchell	8	St. Paul
Mitchell	Chicago	7	St. Paul
Mitchell	St. Paul	7	
Minneapolis	Iroquois, S. Dak.	4	
[fol. 160]			
Superior, Wis.	Wessington Springs	1	St. Paul
Huron	St. Louis Park	1	
South St. Paul	Brookings	2	
Wausau, Wis.	Mitchell	2	St. Paul
Chicago	Huron	6	St. Paul
Appleton, Wis.	Brookings	1	St. Paul
St. Paul	Redfield, S. Dak.	1	
St. Paul	Gettysburg, S. Dak.	1	
South St. Paul	Huron	4	
Minneapolis	Wessington, S. Dak.	1	Huron
Appleton, Wis.	Huron	1	St. Paul
Columbus, Ohio	Huron	1	St. Paul
St. Paul	Pierre, S. Dak.	1	Huron
Huron	South St. Paul	1	
Eau Claire, Wis.	Mitchell	1	St. Paul
Duluth	Parkston, S. Dak.	1	St. Paul
Duluth	Colton, S. Dak.	1	St. Paul
Minneapolis	Chamberlain	1	
Duluth	Parker, S. Dak.	1	St. Paul
St. Paul	Yankton	1	

September, 1935

Huron	Minneapolis	37	
Minneapolis	Mitchell	52	
Minneapolis	Huron	159	
Appleton, Wis.	Huron	1	St. Paul
Eau Claire, Wis.	Mitchell	4	St. Paul
St. Paul	Mitchell	62	
St. Paul	Huron	107	
Mitchell	St. Paul	10	
South St. Paul	Huron	5	
Appleton, Wis.	Brookings	1	St. Paul
Minneapolis	Iroquois, S. Dak.	2	
Mitchell	Chicago	7	St. Paul
Huron	Chicago	6	St. Paul
Huron	St. Paul	7	
Minneapolis	Brookings	10	
Mitchell	Minneapolis	5	
Huron	St. Louis Park	2	
Huron	Racine, Wis.	1	St. Paul

Origin	Destination	Number of Ship- ments	Interchange Points
September, 1935			
Duluth	Mitchell	9	St. Paul
Indianapolis, Ind.	Huron	1	St. Paul
Minneapolis	De Smet	1	
St. Paul	Brookings	10	
Minneapolis	Madison	3	
Laurel, Wia.	Huron	7	St. Paul
Albert Lea, Minn.	Mitchell	1	St. Paul
Sioux Falls	Minneapolis	3	
Akron, Ohio	Mitchell	5	St. Paul
New Kensington, Pa.	Mitchell	1	St. Paul
Minneapolis	Lake Preston	1	
Huron	South St. Paul	3	
St. Paul	Westington Springs	1	Huron
Duluth	Colton, S. Dak.	1	St. Paul
Duluth	Parker, S. Dak.	2	St. Paul
Duluth	Parkston, S. Dak.	1	St. Paul
Minneapolis	Parker, S. Dak.	1	
Minneapolis	Parkston, S. Dak.	1	Mitchell
Akron	Huron	4	St. Paul
Chicago	Huron	3	St. Paul
Minneapolis	Forestburg, S. Dak.	1	
Minneapolis	Sioux Falls	2	
Akron, Ohio	Sioux Falls	2	St. Paul
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Akron, Ohio	Yankton, S. Dak.	2	St. Paul
St. Paul	Emery, S. Dak.	2	
St. Paul	Yankton	5	
Minneapolis	Yankton	6	
Minneapolis	Pierre	1	Huron
St. Paul	Sioux Falls	1	
St. Paul	Miller	1	Huron
St. Paul	Pierre	1	Huron
Minneapolis	Miller	1	Huron
Minneapolis	Elk Point, S. Dak.	1	
Minneapolis	Flandreau	1	
Minneapolis	Vermillion	1	
Minneapolis	Westington Springs	2	
Minneapolis	Arlington, S. Dak.	3	
Winona, Minn.	Huron	1	St. Paul
Minneapolis	Trent, S. Dak.	1	
Minneapolis	Eagan, S. Dak.	1	
Minneapolis	Marion, S. Dak.	1	
Minneapolis	Ethan, S. Dak.	1	
Minneapolis	Alexandria	1	
Minneapolis	Hartford, S. Dak.	1	
Minneapolis	Dell Rapids	1	
Minneapolis	Baltic, S. Dak.	1	
Minneapolis	Mt. Vernon, S. Dak.	1	
Minneapolis	Cavour, S. Dak.	1	
Minnesota Transfer	Sioux Falls	1	
St. Paul	Yale, S. Dak.	1	
Sioux Falls	Waseca, Minn.	1	
Waseca, Minn.	Minneapolis	1	
October, 1935			
Minneapolis	Huron	76	
Minneapolis	Mitchell	23	
St. Paul	Huron	59	
Akron, Ohio	Huron	1	St. Paul

Origin	Destination	Number of Shipments	Interchange Points
October, 1935			
Chicago	Huron	2	St. Paul
Duluth	Mitchell	10	St. Paul
Duluth	Colton, S. Dak.	3	
Duluth	Parkston, S. Dak.	1	
Minneapolis	Sioux Falls	4	
South St. Paul	Salem, S. Dak.	2	
Minneapolis	Iroquois	2	
Minneapolis	Yankton	5	
Minneapolis	Elk Point, S. Dak.	1	
St. Paul	Sioux Falls	2	
Mitchell	Chicago	3	St. Paul
Huron	St. Paul	8	
St. Paul	Mitchell	32	
Eau Claire, Wis.	Huron	4	St. Paul
St. Paul	Emery, S. Dak.	1	
Minneapolis	Brookings	12	
De Smet	Minneapolis	1	
St. Paul	Pierre	1	Huron
Fostoria, Ohio	Vermillion, S. Dak.	1	St. Paul
St. Paul	Redfield, S. Dak.	1	Huron
Sioux Falls	Minneapolis	2	
St. Paul	Brookings	5	
Huron	Minneapolis	16	
St. Paul	Vermillion	1	
Minneapolis	Hartford, S. Dak.	1	
(fol. 162)			
Dodge Center	Huron	2	
Pontiac, Mich.	Huron	1	St. Paul
Duluth	Humboldt	1	St. Paul
St. Paul	Yankton	2	
Mitchell	Duluth	1	St. Paul
Huron	Chicago	2	St. Paul
Mitchell	Minneapolis	2	
Mitchell	St. Paul	2	
South St. Paul	Huron	2	
Eau Claire, Wis.	Mitchell	5	St. Paul
Huron	South St. Paul	1	
Milwaukee	Huron	1	St. Paul

[fol. 163]

PARTIAL ABSTRACT OF STTEE EXHIBIT NO. 3

Showing All Shipments To and From Minnesota Points Exclusive of the Twin Cities.

	Date	Origin	Destination	Commodity
May	1, 1935	Huron, S. D.	Atkinson, Minn.	Potatoes
	6	Baker, Minn.	Huron, S. D.	Potatoes
	2	Hill City, Minn.	Huron, S. D.	Potatoes
	3	Hill City, Minn.	Huron, S. D.	Potatoes
	6	Hill City, Minn.	Huron, S. D.	Vegetables
	7	Baker, Minn.	Huron, S. D.	Potatoes
	9	Baker, Minn.	Huron, S. D.	Potatoes
	13	Hill City, Minn.	Huron, S. D.	Potatoes
	14	Hill City, Minn.	Huron, S. D.	Potatoes
	15	Hill City, Minn.	Huron, S. D.	Potatoes
June	12, 1935	Grand Rapids, Minn.	Huron, S. D.	Potatoes
	12	Redwood Falls, Minn.	Huron, S. D.	Butter tubs
	25	Huron, S. D.	Marshall, Minn.	Eggs
July	2, 1935	Huron, S. D.	Marshall, Minn.	Eggs
	11	Huron, S. D.	Marshall, Minn.	Eggs

Date	Origin	Destination	Commodity
July 24, 1935	St. Paul, Minn.	Dawson, Minn.	Maple leaf
26	St. Paul, Minn.	Elmore, Minn.	Nails
Aug. 4, 1935	Dodge Center, Minn.	Huron, S. D.	Canned peas
5	Dodge Center, Minn.	Huron, S. D.	Canned peas
Sept. 30, 1935	Sioux Falls, S. D.	Wasoca, Minn.	Printing press
30	Wasoca, Minn.	Minneapolis, Minn.	Steel
Oct. 12, 1935	Dodge Center, Minn.	Huron, S. D.	Canned goods

[Vol. 164] Service to the State STYER EXHIBIT No. 4

"Showing Road Expense Items for April and May, 1935"

Date	Firm	City	Item
April (D)	John Chandler	Sioux Falls, S. D.	Tube
4/4 (C)	Larnie Wayne	Huron, S. D.	Meals
4/7 (C)	The Day and Nite Gar.	Mitchell, S. D.	Spark Plug
4/7 (J)	Wells Tire Co.	Sioux Falls, S. D.	Tire Repair
4/8	Hoffman and Curtis	Ivanhoe, Minn.	Gas and Oil
4/9 (A)	Standard Oil Station	Luverne, Minn.	Gas
4/9 (D)	Banner Oil Co.	Brookings, S. D.	Gas
4/9	Standard Oil Co.	Marshall, Minn.	Gas
4/9	Lamberton Oil Co.	Lamberton, Minn.	Gas
4/10	Independent Oil Co.	Cologne, Minn.	Tube
4/10	Standard Oil Co.	St. Peter, Minn.	Gas
4/10	Cash	Pumpkin Center, S. D.	Gas
4/10 (D)	Mac and Carl Tire Ser.	Huron, S. D.	Gas and oil
4/10 (D)	Bozum Service Sta.	Mitchell, S. D.	Gas and oil
4/10 (D)	Johnson Oil Co.	Worthington, Minn.	Gas
4/10	Anderson Ice Co.	Mitchell, S. D.	Ice
4/10	Anderson Ice Co.	Mitchell, S. D.	Ice
4/10	Sherwood Pet Corp.	Mitchell, S. D.	Gas
4/11	Murrell and Karl	Jackson, Minn.	Gas
4/11 (D)	Economy Tire & Motor	Fairmont, Minn.	Gas
4/12 (D)	Economy Tire & Motor	Fairmont, Minn.	Gas
4/12 (D)	Standard Oil Co.	Le Sueur, Minn.	Gas
4/12 (D)	Wieland Motor Sales	Le Sueur, Minn.	Light Bulb
4/12 (D)	Standard Oil Co.	Luverne, Minn.	Gas
4/13 (D)	White Eagle Oil	Belle Plaines	Gas
4/13 (D)	Johnson Oil Co.	Worthington, Minn.	Gas
4/13 (D)	Bozum Serv. Station	Mitchell, S. D.	Gas
4/13 (D)	Standard Oil Co.	Sioux Falls, S. D.	Gas
4/13	Anderson Ice Co.	Mitchell, S. D.	Ice
5/1	G. W. Schrader	White, S. D.	Oil
5/2	Webb Oil Dealer	Manchester, S. D.	Gas
5/2	White Eagle Oil Corp.	Belle Plaines, Minn.	Gas
5/2	Midwest Oil Co.	Wall Lake, S. D.	Gas
5/2	Standard Oil Co.	Jackson, Minn.	Gas
5/3	Howard Habegger	Chaska, Minn.	Tire Repair
5/4	Standard Oil Co.	Mankato, Minn.	Gas
5/7	Natl. Refining Co.	Mitchell, S. D.	Gas
5/7	Artesian Cafe	Artesian, S. D.	Meals
5/7	Standard Oil Co.	Sioux Falls, S. D.	Gas
5/8	Scott Co. Oil Co.	Jordan, Minn.	Gas
5/9	Conoco Co.	Jordan, Minn.	Gas
5/9	Standard Oil Co.	Lake Benton, Minn.	Gas
5/10	Conoco Co.	Jordan, Minn.	Gas
5/14	Conoco Co.	Jordan, Minn.	Gas
5/15	Lake Benton Oil Co.	Lake Benton, Minn.	Gas
5/17	Phillips Pet. Co.	Sanborn, Minn.	Gas
5/17	Standard Oil Co.	Lake Benton, Minn.	Gas
5/17	Phillips Pet. Co.	Sanborn, Minn.	Gas
5/20	White Eagle Oil	Mitchell, S. D.	Gas
5/20	Penn American Oil Co.	Madison, S. D.	Gas
5/23	Conoco Co.	Jordan, Minn.	Gas

STYER EXHIBIT No. 4—Contd.

Date	Firm	City	Item
4/14 (A)	Standard Oil Co.	Le Sueur, Minn.	Gas
4/14 (D)	Economy Tire & Motor	Fairmont, Minn.	Gas
[fol. 165]			
4/15 (D)	Chas. H. Lutz Co.	Tracy, Minn.	Gas
4/15 (D)	Don E. & Florence Tracy	Gaylord, Minn.	Gas
4/14 (D)	Standard Oil Co.	Le Sueur, Minn.	Gas
4/16 (D)	Mae & Earl Tire Serv.		Gas and oil
4/16 (D)	Banner Oil Co.	Brookings, S. D.	Gas
4/16 (D)	Barghof Motor Co.	Tracy, Minn.	Gas and Oil
4/16 (D)	M & M Master Station	Huron, S. D.	Parts
4/16 (D)	White Eagle Oil Corp.	Brookings, S. D.	Gas and oil
4/17 (D)	Don & Florence Tracy	Gaylord, Minn.	Gas
4/17 (D)	Chas. H. Lutz Co.	Tracy, Minn.	Gas and oil
4/13 (B)	Rushmore Cafe.	Sioux Falls, S. D.	Meals
4/— (C)	Ideal Cafe.	Worthington, Minn.	Meals
4/— (C)	Margurite Cafe.	Mitchell, S. D.	Meals
4/— (C)	Pheasne Hotel.	St. Peter, Minn.	Meals
4/— (D)	Standard Oil Co.	Le Sueur, Minn.	Gas
4/— (D)	Standard Oil Co.	Mankato, Minn.	Gas
4/—	Anderson Ice Co.	Mitchell, S. D.	Ice
4/—	Anderson Ice Co.	Mitchell, S. D.	Ice
4/— (B)	McLeans.	Huron, S. D.	Room Rent
4/— (B)	Eat Shop.	Jackson, Minn.	Meals
5/23	Phillips Pet. Co.	Sanborn, Minn.	Gas
5/25	Conoco Co.	Jordan, Minn.	Gas
5/29	Conoco Co.	Jordan, Minn.	Gas

[fol. 166]

STYER EXHIBIT 5

Northwestern Transportation Co.

Rates from Twin Cities to Following Towns

	1st Class	2nd	3rd	4th
Brookings	\$1.01	\$.87	.69	.56
Volga	1.04	.87	.69	.56
Arlington	1.05	.87	.69	.56
Hetland	1.08	.92	.74	.59
Lake Preston	1.09	.93	.74	.59
De Smet	1.10	.93	.75	.60
Iroquois	1.16	.95	.78	.61
Cavour	1.17	1.01	.79	.61
Huron	1.20	1.04	.81	.63
Wolsey	1.30	1.12	.87	.67
Wessington	1.35	1.17	.91	.70
Vayland	1.38	1.19	.92	.72
St. Lawrence	1.38	1.19	.92	.72
Miller	1.38	1.26	.96	.76
Ree Heights	1.49	1.33	1.01	.79
Highmore	1.61	1.35	1.07	.83
Holabird	1.65	1.35	1.09	.83
Harrold	1.65	1.35	1.11	.84
Blunt	1.65	1.42	1.12	.86
Pierre	1.65	1.42	1.16	.90
Mitchell	1.08	.86	.69	.56
Sioux Falls	.92	.75	.63	.50
Yankton	1.10	.87	.70	.60
Redfield	1.20	1.02	.81	.62
Aberdeen	1.20	1.02	.81	.62

[fol. 167]

STYER EXHIBIT No. 7

Abstract of Trip Sheets Showing Trips Made and Towns Served by Applicant
Between April 1, 1935 and November 12, 1938, Inclusive

[fol. 168]

April 1935

- 16 Huron, Mitchell
- 17 Huron
- 18 (Manifest missing) (Some freight bills and bill of lading in file)
Madison, incoming)
- 19 (Manifest missing) (Some freight bills and bill of lading in file)
- 20 (Manifest missing) (Some freight bills and bill of lading in file)
- 22 (Manifest missing) (Some freight bills and bill of lading in file)
- 23 (Manifest missing) (Some freight bills and bill of lading in file)
- 24 Huron, Brookings, Madison, Mitchell
- 25 Huron, Brookings, Mitchell
- 25 (Return) De Smet, Huron, Mitchell
- 26 (Return) Huron, Mitchell
- 27 (Return) Mitchell, Huron
- 28 Huron
- 29 Huron, Mitchell

May

- 1 Atkinson, Minn., Huron, Mitchell
- 2 Huron, Hill City (No manifests for May 2)
- 7 Huron, Baker, Minn.
- 8 Huron, Mitchell, Brookings
- 3 Huron, Mitchell, Hill City, Minn.
- 5 Huron, Brookings, Aberdeen
- 6 Huron, Hill City, Minn.
- 9 Huron, Madison, Baker, Minn.
- 10 Huron, Brookings, Mitchell
- 13 Huron, Mitchell, Aberdeen, Madison, White Bear, Minn.
- 14 Huron, Mitchell, Hill City, Minn.
- 15 Mitchell, Huron, Brookings, Hill City, Minn.
- 17 Huron, Mitchell, Forestburg, Brookings
- 18 Mitchell, Huron
- 16 Huron, Mitchell
- 20 Huron, Mitchell, Brookings
- 21 Huron, Mitchell, Hill City, Minn., Madison; (Pro # 121 extra)
- 22 Mitchell, Huron, Brookings
- 24 Mitchell, Huron, Brookings
- 25 Huron, Mitchell
- 27 Brookings, Huron, Mitchell
- 28 Huron, Mitchell, Brookings, Iroquois
- 30 Mitchell, Huron
- 31 Mitchell, Huron, Brookings

June

- 1 Incoming—, Huron, Mitchell
- 2 Mitchell, Huron
- 3 Huron, Mitchell (Incoming)
- 4 Huron, Mitchell, Sioux Falls
- 5 Huron, Mitchell, Brookings, Wessington
- 6 Huron, Mitchell, Brookings, Sioux Falls
- 7 Sioux Falls, Lake Preston, Huron, Brookings, (Mitchell—, Incoming)
- 8 Huron, Mitchell
- 10 Mitchell, Huron, Sioux Falls
- 11 Iroquois, Mitchell, Huron
- 11 Incoming—, Sioux Falls
- 12 Huron, Mitchell, Brookings
- 12 Incoming—, Mitchell

[fol. 169]

- 13 Mitchell, Huron
- 14 Huron, Brookings, Mitchell

June 1935

- 14 Incoming—, Mitchell
- 15 Marshall, Minn., Huron, Mitchell
- 15 Incoming—, Mitchell, Huron
- 17 Mitchell, Huron, Brookings
- 17 Incoming—, Mitchell
- 20 Mitchell, Huron, Brookings
- 21 Mitchell, Huron, Brookings
- 22 Mitchell, Huron, Madison, (Incoming—, Huron)
- 24 Mitchell, Huron, Brookings
- 24 Incoming—, Mitchell
- 25 Mitchell, Huron, Iroquois
- 25 Incoming—, Mitchell
- 26 Mitchell, Huron, Brookings, Marshall, Sioux Falls
- 27 Incoming—, Mitchell
- 28 Incoming—, Mitchell
- 28 Yankton (Straight load)
- 28 Huron, Mitchell, Brookings
- 29 Huron, Brookings, Madison
- 30 Yankton, Vermillion, Sioux Falls
- 30 Huron, Mitchell, Sioux Falls
- 18 Huron, Mitchell (Incoming—, Mitchell)
- 28 Yankton, Mitchell, Huron

July

- 1 Huron, Iroquois, Mitchell, Brookings
- 2 Huron, Mitchell
- 3 Brookings, Iroquois, Huron, Mitchell
- 5 Huron, Mitchell
- 6 Huron, Arlington, Mitchell
- 8 Mitchell, Huron, Brookings
- 9 Huron, Mitchell
- 10 Huron, Mitchell, Iroquois, Brookings
- 11 Mitchell, Huron
- 12 Huron, Mitchell, Brookings
- 13 Huron, Mitchell
- 14 Howard, Yankton, Madison
- 15 Huron, Brookings, Mitchell
- 16 Mitchell, Huron, Brookings
- 17 Mitchell, Huron, Brookings
- 18 Huron, Mitchell
- 19 Huron, Mitchell, Brookings
- 20 Mitchell, Huron
- 22 Huron, Brookings, Mitchell
- 22 Mitchell, Huron
- 23 Mitchell, Huron
- 24 Brookings, Huron, Mitchell, Madison
- 25 Huron, Mitchell
- 26 Huron, Mitchell
- 27 Huron, Mitchell
- 29 Mitchell, Huron
- 30 Huron, Mitchell, Brookings
- 31 Huron, Brookings, Mitchell

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August

- 1 Huron, Mitchell, Brookings
- 2 Huron
- 3 Huron, Mitchell, Brookings
- 5 Huron, Brookings, Mitchell
- 6 Huron, Mitchell
- 7 Huron, Mitchell, Iroquois
- 8 Mitchell, Huron
- 9 Huron, Mitchell, Brookings
- 10 Huron, Mitchell
- 12 Huron, Brookings, Mitchell
- 13 Huron, Mitchell

August 1935

- 14 Huron
15 Huron, Iroquois, Mitchell, Brookings
16 Mitchell, Huron, Brookings

File Number

- 17 Huron, Mitchell, Iroquois 1
19 Huron, Mitchell, Brookings 2
20 Huron, Brookings, Mitchell 3
21 Huron, Mitchell, Iroquois 4
22 Huron, Mitchell, Brookings 5
23 Huron, Brookings, Mitchell 6
24 Huron, Mitchell, Brookings 7
26 Huron, Mitchell, Brookings 8
27 Huron, Mitchell, Brookings 9
28 Huron, Mitchell 10
29 Huron, Mitchell, Brookings 11
30 Huron, Mitchell 12
31 Huron, Mitchell, Chamberlain 13

September

- 2 Huron, Mitchell, Brookings 14
3 Huron, Mitchell, Parkston 15
4 Mitchell, Huron, Brookings, Iroquois 16
5 Huron, Mitchell 17
6 Huron, Mitchell, DeSmet 18
7 Mitchell, Huron, Brookings 19
8 Mitchell, Huron, Brookings 20
9 Mitchell, Huron 21
10 Huron, Madison, Brookings, Mitchell 22
11 Huron, Mitchell 23
12 Brookings, Huron, Mitchell 24
13 Huron, Mitchell, Brookings 25A
16 Huron, Mitchell 25B
17 Brookings, Mitchell, Huron, Forestburg 26B
14 Huron, Mitchell, Brookings, Parkston, Parker, Colton 26A
18 Huron, Mitchell, Iroquois, Brookings 27
19 Huron, Mitchell 29
21 Huron, Brookings, Mitchell 31
22 Sioux Falls, Flandreau 32
23 Huron, Mitchell 33
24 Huron, Mitchell, Brookings 34
24 Elk Point, Vermillion, Sioux Falls, Yankton, Emery, Mitchell 35
25 Huron, Mitchell, Arlington 36
26 Huron, Mitchell, Brookings, Arlington 37
27 Huron, Mitchell 38
28 Madison, Mitchell, Sioux Falls, Yankton, Parker, Elk Point, Ethan Alexandria, Marion 39

[fol. 171]

- 28 Huron, Mitchell, Madison, Dell Rapids, Baltic, Egan, Hartford 40
30 Huron, Mitchell, Brookings, Arlington 42
28 Huron, Yale 41

October

- 1 Huron, Mitchell, Brookings 43
2 Mitchell, Salem, Colton, Parkston, Sioux Falls, Baltic 44
2 Huron, Iroquois 45
3 Huron, Mitchell, Brookings 46
4 Huron, Mitchell, Brookings 47
5 Huron, Sioux Falls, Mitchell, Emery, Vermillion, Yankton 48
9 Huron, Mitchell 49
9 Huron, Mitchell, Brookings 50
10 Huron, Mitchell, Iroquois 51
10 Sioux Falls, Vermillion, Salem, Hartford 52
11 Mitchell, Brookings 53
11 Huron 54
11 Mitchell, Huron, Brookings 55
12 Huron, Brookings, Mitchell 56

October 1935

File Number

13	Yankton, Humboldt, Colton, Huron	57
13	Pierre, Huron, Mitchell, Brookings	58
14	Huron, Mitchell, Brookings	59
15	Mitchell	60
15	Huron, Mitchell, Brookings	61
16	Huron, Iroquois, Brookings	62
16	Yankton, Sioux Falls, Mitchell, Emery, Parkston	63
17	Huron	63
17	Huron, Mitchell, Brookings	64
18	Huron, Arlington, Brookings, Mitchell, Forestburg	65
19	Davis, Sioux Falls, Mitchell, Vermillion, Yankton	67
21	Huron, Mitchell, Brookings	68
22	Huron, Mitchell, Iroquois	69
23	Huron, Sioux Falls, Mitchell, Lennox, Hartford	70
24	Huron, Mitchell, Brookings, DeSmet	71
25	Huron, Mitchell, Brookings	72
28	Mitchell, Arlington, Huron, Brookings	73
26	Huron, Brookings, Mitchell, Colton, Sioux Falls	73
29	Huron, DeSmet	74
29	Huron, Mitchell, Brookings	75
31	Arlington, Huron	76
31	Huron	77
31	Huron, Mitchell, Brookings, Iroquois	78

November

1	Mitchell, Huron, Brookings	79
2	Sioux Falls, Madison, Mitchell, Brookings, Yankton, Parkston, Hartford, Menno	80
4	Huron, Mitchell, Brookings, Hayti	81
5	Huron, Arlington, Mitchell	82
5	Sioux Falls, Brookings	83
6	Huron, Mitchell, Brookings	84
7	Huron, Mitchell, Chamberlain	85
8	Huron, Mitchell, Brookings	86
9	Sioux Falls, Huron, Mitchell, Flandreau	87
11	Huron, Brookings, Mitchell,	88
12	Huron	89
13	Mitchell, Huron, Iroquois, Lake Preston	90
13	Huron	91

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14	Huron, Brookings, Forestburg, Mitchell	92
15	Yankton, Sioux Falls, Colton, Madison	93
15	Brookings, Huron, Arlington, Mitchell	94
16	Huron, Brookings, Mitchell	95
18	Huron, Arlington, Mitchell	96
19	Huron, Mitchell, Rapid City, Blunt	97
20	Huron	98
20	Brookings, Huron, Mitchell	99
21	Huron, Brookings, Mitchell	100
22	Mitchell, Huron, Brookings	101
23	Rapid City	103
24	Sioux Falls, Yankton, Brookings, Vermillion, Colton, Scotland, Canton, Madison	104
24	Huron, Mitchell	105
25	Huron, Mitchell, Brookings, Carpenter	106
26	Huron, Arlington, Mitchell, Brookings, Iroquois	107
27	Huron, Mitchell	108
30	Madison, Huron, Brookings, Mitchell, DeSmet, Sioux Falls	109

December

3	Huron, Mitchell, Brookings	110
4	Huron, Mitchell, Sioux Falls, Hartford, Brookings	110
5	Brookings, Huron, Mitchell	111
7	Rapid City, Huron	112
7	Huron, Forestburg	113
7	Huron, Yankton, Sioux Falls	114

December 1935

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18	Sioux Falls, Mitchell, Huron	651
20	Sioux Falls, Mitchell, Huron, Madison, Brookings	652
20	Incoming—, Huron, Brookings, Madison, Sioux Falls, Mitchell, Ft. Thompson	653
21	Brookings, Madison	654
22	Brookings, Huron, Lake Preston, Gaylord, Minn.	655
22	Sioux Falls, Mitchell	656
23	Sioux Falls, Mitchell, Huron, Brookings	657
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24	Sioux Falls, Mitchell, Madison, Brookings	659
25	Brookings, Huron, Madison, Sioux Falls	660
25	Yankton, Mitchell	661
26	Brookings, Madison, Sioux Falls, Mitchell, Huron	662
27	Sioux Falls, Mitchell, Huron, Madison, Brookings	663
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4	Sioux Falls, Madison, Huron, Brookings	670
5	Gibbons, Sioux Falls, Madison, Gaylord, Adrian, Minn.	671
6	Incoming—, Huron, Mitchell, Madison	672
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8	DeSmet, Sioux Falls, Mitchell, Huron	674
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9	Brookings, Huron, Mitchell, Sioux Falls	676
10	Sioux Falls, Madison, Mitchell, Huron, DeSmet	677
11	Huron	678
11	Brookings, Madison, Sioux Falls, Yankton	679
11	Huron, Mitchell, Arlington	680
12	Sioux Falls, Madison, Mitchell, Huron, Brookings	681
13	Incoming—, Brookings, Sioux Falls, Mitchell, Huron	682
15	Sioux Falls	683
15	Brookings, Madison	684
15	Brookings, Huron, Mitchell, Lake Preston, DeSmet	685
16	Huron, Brookings, Norwood, Minn.	686
16	Mitchell, Madison	687
18	Sioux Falls	688
17	Brookings, Huron, Lake Preston	689
18	Huron, Mitchell, DeSmet	690
18	Brookings, Madison	691
19	Brookings, Huron	692
19	Sioux Falls, Mitchell, Madison	693
20	Sioux Falls, Yankton	694
20	Brookings, Madison, Mitchell, Huron	695
20	Incoming—, Huron, Madison, Sioux Falls, Mitchell	695
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22	Sioux Falls, Mitchell, Huron	700
25	Sioux Falls, Brookings	701
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26	Sioux Falls, Mitchell, Madison, Brookings	704
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27	Incoming—, Sioux Falls, Albert Lea, Huron, Yankton, Mitchell, Brookings	706
29	Brookings, Madison, Sioux Falls	707
29	Huron, Mitchell	708
30	Sioux Falls, Mitchell, Huron	709
30	Sioux Falls, Madison	710
31	Huron	711
31	Sioux Falls, Mitchell, Huron	712
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1	Sioux Falls, Madison, Brookings	713
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2	Sioux Falls, Mitchell, Huron	715
3	Sioux Falls, Mitchell, Huron	716
3	Incoming—, Sleepy Eye, Mitchell, Brookings, Madison, Ft. Thompson, Sioux Falls, Farmer	717
5	Sioux Falls, Madison	718
6	Mitchell, DeSmet	719
6	Sioux Falls, Madison, Brookings	720
7	Sioux Falls, Mitchell	721
8	Sioux Falls, Madison, Mitchell	722
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12	Madison, Brookings, Aurora	727
13	Sioux Falls, Mitchell, Huron, Brookings, Madison	728
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15	Brookings, Huron, Mitchell, Madison	730
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17	Cavour, Sioux Falls, Madison, Huron, Brookings	732
17	Incoming—, Huron, Brookings, Madison, Mitchell	733
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19	Huron, Mitchell	735
20	Sioux Falls, Mitchell, Huron, Brookings, DeSmet	736
21	Brookings, Madison, Sioux Falls, Mitchell, Huron	737
22	Madison, Mitchell, Huron	738
22	Brookings, Sioux Falls	739
23	Sioux Falls, Mitchell, Huron, Brookings	740
21	Fairmont, Sioux Falls, Madison, Brookings	741
24	Lake Benton, Brookings, Huron, Lake Preston, Elkton	742
24	Incoming—, Yankton, Sioux Falls, Mitchell, Brookings, Huron	743
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28	Arlington, Sioux Falls, Mitchell, Huron, Madison, Brookings	746
29	Sioux Falls, Madison, Huron, Mitchell	747
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4	Brookings, Huron, Mitchell	755
5	Brookings, Huron, Mitchell, Sioux Falls	756
6	Brookings, Madison, Sioux Falls, Mitchell, Huron	757
7	Sioux Falls, Mitchell, Huron, Madison, Brookings	758
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8	Incoming—, Huron, Brookings, Ft. Thompson, Fedora, Yankton, Mitchell, Sioux Falls	760
10	Brookings, Madison, Sioux Falls	761
10	Brookings, Huron, Mitchell, Yankton	762
11	Brookings, Huron, Mitchell, Sioux Falls	763
12	Mitchell, Huron	765
12	Brookings, Madison, Sioux Falls	766
13	Brookings, Madison, Sioux Falls	767
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14	Aurora, Brookings, Huron, Mitchell, Madison, DeSmet	769
15	Brookings, Madison, Sioux Falls, Mitchell, Huron, DeSmet	770
14	Incoming—, Sioux Falls, Madison, Huron, Brookings, Yankton, Salem, Mitchell	771
17	Brookings, Madison, Sioux Falls	772
17	Aurora, Sioux Falls, Mitchell, Huron	773
18	Sioux Falls, Mitchell, Madison	774
18	Brookings, Huron, Arlington	775
19	Brookings, Madison, Mitchell, Pierre	776
20	DeSmet, Brookings, Madison, Sioux Falls, Mitchell, Huron, Lake Preston	777
21	Sioux Falls, Flandreau	778
21	Brookings, Huron, Mitchell, Madison	779
22	Sioux Falls, Mitchell, Huron, Brookings	780
22	Incoming—, Huron, Mitchell, Brookings	781
24	Brookings, Madison, Mitchell, Huron, DeSmet, Arlington	782
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29	Incoming—, Brookings, Huron, Sioux Falls, Lake Preston, Madison	787

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1	Lake Preston, Huron, Mitchell, Sioux Falls	789
3	Sioux Falls, Madison, Ramona	791
3	Brookings, Huron, Mitchell	792
4	Brookings, Madison, Salem, Mitchell, Huron, Marshall	793
—	Incoming—, Mitchell, Madison, Huron, Brookings, Sioux Falls	794
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7	Brookings, Madison	796
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9	Huron, Arlington	800
9	Brookings, Madison, Mitchell, Sioux Falls	801
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10	Pierre, Brookings, Madison, Mitchell, Huron, Volga	803
11	Madison, Mitchell, Sioux Falls	804
12	Huron, Arlington, Brookings, Pierre	805
12	Incoming—, Huron, Mitchell, Brookings, Madison, Sioux Falls, Marshall	806
14	Sioux Falls, Yankton, Mitchell, Huron	807
13	Brookings, Madison, Wentworth, Arlington	808
15	Sioux Falls, Brookings, Huron, Madison, Canton	809
17	Brookings, Huron, Mitchell	812
16	Brookings, Huron, Mitchell, Sioux Falls	810
16	Sioux Falls, Madison	811
18	Sioux Falls, Madison, Mitchell, Huron	813
19	DeSmet, Sioux Falls, Mitchell, Huron, Brookings, Arlington	814
18	Incoming—, Huron, Brookings, Sioux Falls, Madison, Mitchell, Salem, Yankton	815
21	St. Cloud, Minn.	816
21	Brookings, Madison, Sioux Falls	817
21	Huron, Mitchell, Arlington	818
22	Sioux Falls, Mitchell, Huron, Madison, Brookings, Flandreau, DeSmet, Iroquois	819
23	Sioux Falls, Mitchell, Huron, Brookings	820
26	Brookings, Madison, Mitchell, Huron, Arlington, Tracy, Minn.	821
26	Incoming—, Huron, Mitchell, Brookings, Madison, Sioux Falls	822
28	DeSmet, Brookings, Madison, Mitchell, Huron	823
29	Brookings, Huron, Mitchell, Sioux Falls	824
30	Sioux Falls, Madison, Brookings, Ramona	825

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1	Mitchell, Huron, Iroquois, Volga	826
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2	Sioux Falls, Mitchell, Huron, Madison, Brookings	829
3	Incoming—, Brookings, Mitchell, Huron, Sioux Falls, Yankton	830
6	Huron, Mitchell, Lake Preston, Volga	831
6	Brookings, Madison, Sioux Falls	832
7	Brookings, Huron, Mitchell, Sioux Falls	833
8	Brookings, Madison, Mitchell, Huron, Arlington, Redwood, Minn.	834
9	Brookings, Huron, Mitchell, Sioux Falls	835
10	Brookings, Huron, Madison, Sioux Falls, Lennox, Yankton	836
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17	Incoming—, Brookings, Huron, Sioux Falls, Madison, Mitchell	845
19	Brookings, Madison	846
19	Sioux Falls, Mitchell, Huron, DeSmet	847
20	Mitchell, Huron, DeSmet	848
20	Brookings, Madison, Sioux Falls	849
21	Brookings, Huron, Mitchell, Sioux Falls	850
22	Brookings, Madison, Sioux Falls, Mitchell, Huron	851
23	Brookings, Huron, Mitchell, Sioux Falls	852
24	Incoming—, Huron, Madison, Mitchell, Brookings, Sioux Falls	853
26	Brookings, Madison	854
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29	Brookings, Huron, Madison, Sioux Falls, Arlington	858
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31	Arlington, Brookings, Huron, Mitchell, Sioux Falls	860
31	Incoming—, Brookings, Madison, Huron, Mitchell, Sioux Falls	861

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3	Sioux Falls, Mitchell, Huron	863A
2	Sioux Falls, Mitchell, Huron	863B
4	Brookings, Huron, Mitchell, Madison	864
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5	Brookings, Madison, Salem	866
6	Arlington, Brookings, Huron, Mitchell, Sioux Falls, DeSmet	867
7	Worthington, Brookings, Huron, Mitchell, Sioux Falls	868
—	Incoming—, Brookings, Huron, Mitchell, Salem, Madison, Sioux Falls	869
8	Sioux Falls, Mitchell, Huron, Brookings	870
9	Sioux Falls, Madison, Brookings	871
10	Arlington, Brookings, Huron, Mitchell, Sioux Falls	872
11	Brookings, Madison, Sioux Falls, Mitchell, Huron	873
12	Elmore, Minn., Sioux Falls, Madison	874
12	Brookings, Huron, Mitchell	875
13	Sioux Falls, Mitchell, Huron, Brookings	876
14	Brookings, Madison, Huron, Mitchell, Sioux Falls	877
—	Incoming—, Huron, Brookings, Madison, Sioux Falls	878
16	Brookings, Huron, Mitchell, Sioux Falls, Arlington	879
17	Brookings, Madison, Sioux Falls, Mitchell, Huron, Lake Benton	880
18	Brookings, Huron, Mitchell, Sioux Falls, DeSmet	881
19	Brookings, Madison, Huron	882
19	Sioux Falls, Mitchell, Yankton, Howard	883
20	DeSmet, Brookings, Huron, Mitchell, Sioux Falls	884
21	Brookings, Madison, Sioux Falls, Mitchell, Huron, Redwood Falls, Minn.	885
21	Incoming—, Huron, Brookings, Sioux Falls, Mitchell	886A
23	Huron, Mitchell, Sioux Falls	886B
23	Brookings, Madison	887
24	Brookings, DeSmet, Huron, Mitchell, Sioux Falls	888
25	Brookings, Sioux Falls, Madison, Huron	889
26	Brookings, Madison, Sioux Falls, Mitchell, Huron	890
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28	Brookings, Madison, Sioux Falls, Mitchell, Huron, Arlington	892
28	Incoming—, Mitchell, Huron, Brookings, Sioux Falls	893
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4	Incoming—, Mitchell, Huron, Sioux Falls, Madison, Brookings	903
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9	Brookings, Madison, Arlington, Sioux Falls, Mitchell	907
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13	Huron, Miller	912
13	Brookings, Madison, Sioux Falls, Mitchell	913
14	Brookings, Sioux Falls, Mitchell, Huron, Forestburg, Lake Preston, Arlington	914
15	Brookings, Madison, Huron	915
16	Brookings, Madison, Sioux Falls	916
16	Salem, Mitchell, Yankton	917
16	Brookings, Huron, Miller, DeSmet	918
17	DeSmet, Brookings, Huron, Mitchell, Sioux Falls	919
18	Brookings, Huron, Artesian, Sioux Falls, Worthington	920
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21	Brookings, Huron, Mitchell, Sioux Falls, Beresford, Arlington, DeSmet	923
22	Brookings, Madison, Sioux Falls, Mitchell, Huron	924
23	Sioux Falls, Madison, Brookings	925
23	Sioux Falls, Mitchell, Huron, Miller	926
24	Brookings, Mitchell, Madison, Sioux Falls	927
24	Sioux Falls, Mitchell, Huron, Brookings	928
25	Incoming—, Huron, Mitchell, Sioux Falls, Artesian, Madison, Brookings	929
27	Sioux Falls, Madison, Mitchell	930
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28	Sioux Falls, Mitchell, Huron, Brookings	932
29	Sioux Falls, Madison, Huron, Brookings	933
30	Sioux Falls, Mitchell, Yankton	934
30	Brookings, Huron, Miller, DeSmet	935

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7	Sioux Falls, Madison, Mitchell	946
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9	Brookings, Huron, Mitchell, Sioux Falls	949
9	Incoming—, Madison, Huron, Mitchell, Sioux Falls, Brookings	950
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19	Brookings, Huron, Mitchell, DeSmet	963
20	Sioux Falls, Madison, Huron, Brookings, DeSmet	964
21	Brookings, Madison, Sioux Falls, Mitchell	965
21	Brookings, DeSmet, Huron, Miller	966
22	Brookings, Sioux Falls, Mitchell, Huron	967
23	Incoming—, Mitchell, Sioux Falls, Huron, Brookings	968
25	Sioux Falls	969
25	Huron, Arlington, Miller	970
25	Brookings, Madison, Mitchell	971
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28	Brookings, Huron, Miller	974
28	Sioux Falls, Mitchell, Madison	975
29	Sioux Falls	976
30	Brookings, Madison, Mitchell, DeSmet, Volga	977
30	Brookings, Huron, Mitchell, Sioux Falls, DeSmet, Volga, Aurora, Arlington	978
30	Incoming—, Mitchell, Huron, Madison, Sioux Falls, Miller, Brookings, Salem	979

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4	Brookings, Sioux Falls, Madison, Huron, Miller	984
5	Arlington, Sioux Falls, Mitchell, Huron, Brookings, Springfield	985
6	Brookings, Madison, Sioux Falls, Mitchell, Huron, Arlington	986
6	Incoming—, Brookings, Huron, Miller, Mitchell	987
8	Sioux Falls, Madison, Brookings	988
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9	Brookings, Sioux Falls, Mitchell, Huron	990
10	Brookings, Sioux Falls, Madison, Huron, Arlington	991
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12	Brookings, Sioux Falls, Mitchell, Huron	994
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15	Brookings, Madison, Salem, Mitchell, Huron, DeSmet	998
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18	Sioux Falls, Madison, Salem, Flandreau	1002
18	DeSmet, Brookings, Huron, Miller, Mitchell	1003
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20	Incoming—, Huron, Mitchell, Brookings, Clinton, Madison	1006
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27	Incoming—, Mitchell, Brookings, Huron, Miller	1017
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2	Madison, Sioux Falls, Yankton, Worthington, Jackson	1022
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4	Brookings, Madison, Sioux Falls, Mitchell, Huron, LeSueur	1025
4	Incoming—, Salem, Mitchell, Huron, Brookings, Madison, Yankton, Miller	1226
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7	Brookings, Huron, Mitchell	1228
8	Brookings, Sioux Falls, Mitchell, Madison	1229
9	Brookings, Huron, Mitchell, Sioux Falls	1230
10	DeSmet, Bruce, Brookings, Madison, Sioux Falls, Mitchell, Jackson	1231
11	Brookings, Madison, Sioux Falls, Mitchell, Huron	1232
10	Incoming—, Huron, Brookings, Mitchell, Sioux Falls, Madison	1233
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17	Sioux Falls, Mitchell, Jackson, Worthington	1238
17	Brookings, Huron, Gibbon, Gaylord, Lake Preston	1239
18	Sioux Falls, Mitchell, Huron, Brookings	1240
18	Incoming—, Huron, Brookings, Sioux Falls, Mitchell	1241
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22	Brookings, Sioux Falls, Mitchell, Huron	1276
22	Incoming—, Mitchell, Huron, Brookings, Madison, Salem, Sioux Falls	1277
24	Sioux Falls, Madison, Salem	1278
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26	Sioux Falls, Mitchell, Huron, Brookings	1282
27	Brookings, Sioux Falls, Madison, Huron, Miller	1283
28	Brookings, Sioux Falls, Mitchell, Madison	1284
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5	Incoming—, Miller, Mitchell, Huron, Salem, Sioux Falls, Brookings	1293
7	Brookings, Madison, Huron, Miller, Marshall	1294
7	Sioux Falls, Mitchell, Worthington	1295
8	Sioux Falls, Vermillion, Yankton	1296
8	Arlington, Brookings, Dell Rapids, Sioux Falls, Mitchell, Huron	1297
9	Brookings, Madison, Sioux Falls, Mitchell, Huron	1298
10	Sioux Falls, Madison, Salem, Fairmont, Mankato	1299
10	Brookings, Huron, Miller	1300
11	Arlington, Brookings, Sioux Falls, Mitchell, Huron, Ivanhoe	1301
12	Incoming—, Huron, Brookings, Mitchell, Sioux Falls, Salem, Madison	1302
14	Huron, Miller, Arlington	1303
14	Brookings, Sioux Falls, Madison, Mitchell	1304
15	Brookings, Huron, Mitchell, Sioux Falls	1305
16	Sioux Falls, Mitchell, Madison, Brookings	1306
17	Brookings, Sioux Falls, Madison, Huron, Miller	1307
18	Brookings, Sioux Falls, Mitchell, Huron, Alexandria	1308
19	Brookings, DeSmet, Huron, Mitchell, Yankton, Vermillion, Sioux Falls, Worthington, Mankato	1309
19	Incoming—, Mitchell, Miller, Brookings, Huron, Sioux Falls	1310
21	Brookings, Sioux Falls, Mitchell, Madison, Salem	1311A
22	Brookings, Huron, Miller, DeSmet	1312

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22	Madison, Brookings, Dell Rapids, Sioux Falls, Mitchell, Salem	1313
24	Brookings, Huron, Miller, Gaylord	1314
24	Sioux Falls, Madison, Mitchell, New Ulm	1315
25	Brookings, Huron, Mitchell, Sioux Falls	1316
26	Brookings, Huron, Mitchell	1317
26	Incoming—, Brookings, Madison, Mitchell, Huron, Miller	1318
28	Sioux Falls, Mitchell, Madison, Springfield, Fairmont	1319
28	Brookings, Huron, Miller	1320A

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1	DeSmet, Brookings, Huron, Mitchell, Redwood Falls	1320B
2	Brookings, Sioux Falls, Mitchell, Huron, Arlington	1321
3	Brookings, DeSmet, Huron, Miller	1322

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3	Sioux Falls, Mitchell, Madison	1323
4	Brookings, Sioux Falls, Mitchell, Huron	1324
5	Incoming—, Mitchell, Brookings, Madison, Huron	1325
7	Huron, Mitchell, DeSmet	1326
7	Brookings, Sioux Falls, Madison, Springfield	1327
8	Brookings, Sioux Falls, Mitchell, Salem, Yankton	1328
9	Brookings, Sioux Falls, Mitchell, Huron	1329
10	Sioux Falls, Mitchell, Madison, Flandreau	1330
10	Brookings, Huron, Miller, New Ulm	1331
11	Sioux Falls, Yankton, Mitchell, Huron, Brookings	1332
12	Incoming—, Madison, Salem, Mitchell, Yankton, Huron, Brookings, Sioux Falls	1333
14	Sioux Falls	1334
14	Brookings, Huron, Miller, Arlington	1335
14	Sioux Falls, Madison, Mitchell	1336
15	Brookings, Sioux Falls, Mitchell, Salem, Madison, Flandreau	1337
16	Brookings, Huron, Arlington	1338
16	Sioux Falls, Mitchell, Huron, Worthington	1339
17	Sioux Falls, Mitchell, Madison, Worthington	1340
17	Arlington, Brookings, Madison, Huron, Miller, Iroquois	1341A
18	Brookings, Huron, Mitchell, Sioux Falls	1341B
19	Huron, Mitchell, Sioux Falls, Madison, Brookings	1342
19	Incoming—, Sioux Falls, Mitchell, Madison, Huron, Brookings	1343A
21	Sioux Falls	1343B
21	Brookings, Madison, Huron, Miller, Marshall, New Ulm	1343C
22	Brookings, Sioux Falls, Mitchell, Huron	1344
23	Brookings, Huron, (Lake Preston, Arlington) Lamberton	1345
23	Sioux Falls, Mitchell, Madison, Redwood Falls	1346
24	Brookings, Huron, Miller, Pierre, Highmore, Harrold	1347
24	Sioux Falls, Madison, Mitchell, Yankton, Salem	1348
25	Brookings, Sioux Falls, Mitchell, Huron, (Arlington)	1349
26	Sioux Falls, Wentworth, Madison, Mitchell, Huron, Arlington, Brookings	1350
26	Incoming—, Sioux Falls, Mitchell, Madison, Miller, Brookings, Yankton	1351
28	Sioux Falls, Madison	1352
28	Brookings, Huron, Miller, Mitchell	1353
29	Brookings, Madison, Sioux Falls, Mitchell, Huron	1354
30	Brookings, Sioux Falls, Mitchell, Huron	1355
31	Sioux Falls, Mitchell	1356
31	Brookings, Madison, Huron, Miller	1357
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1	Brookings, Sioux Falls, Mitchell, Huron	1358
2	Brookings, Madison, Mitchell, Huron, Sioux Falls, Volga	1359
2	Incoming—, Sioux Falls, Huron, Salem, Madison, Brookings, Mitchell, Miller	1360A
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4	Brookings, Huron, Miller	1360B
4	Sioux Falls, Madison, Mitchell, Salem	1361
5	Brookings, Sioux Falls, Mitchell, Huron	1362
6	Brookings, Huron	1363
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7	Sioux Falls, Madison, Salem	1364B
7	Brookings, Huron, Miller, Mitchell	1365
7	Sioux Falls, Yankton, Centerville, Vermillion	1366
8	Brookings, Huron, Mitchell, Madison, Alexandria	1367
8	Jackson, New Ulm, Marshall, Redwood Falls, Worthington	1368
8	Sioux Falls, Yankton, Mitchell, Huron, Brookings	1368
11	Lake Preston, Brookings, Huron, Madison, Miller, Mitchell, Arlington, DeSmet	1370
—	Incoming—, Miller, Huron, Mitchell, Brookings, Yankton, Sioux Falls	1369
12	Sioux Falls, Mitchell	1371
12	Brookings, Huron, (DeSmet, Lake Preston) Arlington	1372

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13	Brookings, Sioux Falls, Marshall, Worthington	1373
13	Huron, Marshall	1374A
14	Redwood Falls, Marshall, Madison, Huron, Miller	1374B
14	Brookings, Dell Rapids, Sioux Falls, Yankton, Mitchell.	1375
15	Brookings, Sioux Falls, Mitchell, Huron	1376
16	Incoming—, Mitchell, Sioux Falls, Yankton, Brookings, Huron, Miller, Madison, Salem	1377
18	Sioux Falls, Madison, (Flandreau)	1378
18	Brookings, Huron, Miller, Mitchell	1379
19	Brookings, Huron	1380
19	Sioux Falls, Madison, Flandreau	1381
20	Brookings, Huron, Mitchell, Salem	1382
21	Brookings, Madison, Redwood Falls	1383
21	Sioux Falls, Mitchell, Huron, Miller	1384
22	Brookings, Huron, Madison, Sioux Falls	1385
23	Sioux Falls, Mitchell, Huron, Brookings	1386
23	Sioux Falls, Worthington	1387
23	Incoming—, Madison, Salem, Mitchell, Brookings, Sioux Falls, Huron	1388
25	Huron, Miller, Mitchell, Salem	1389
25	Brookings, Sioux Falls, Madison, Wentworth	1390
26	Brookings, Huron, Mitchell, Sioux Falls	1391
27	Huron, Volga, DeSmet	1392
27	Brookings, Madison, Sioux Falls, Mitchell	1393
28	Huron, Miller, Highmore	1394
28	Brookings, Madison, Mitchell, Sioux Falls	1395
28	Brookings, Madison, Mitchell, Sioux Falls	1395
30	Sioux Falls, Salem, Madison, Mitchell, Huron	1397A
30	Incoming—, Salem, Madison, Brookings, Huron, Mitchell, Sioux Falls	1397B

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2	Huron, Miller	1398
2	Brookings, Madison, Mitchell, Yankton	1400
2	Sioux Falls, Worthington	1399
3	Flandreau, Madison, Sioux Falls, Emery, Mitchell, Huron, Iro- quois, Brookings	1401
4	Brookings, Sioux Falls, Mitchell, Huron	1402
5	Brookings, Madison	1403
5	Sioux Falls, Mitchell, Huron, Miller	1404
6	Brookings, Sioux Falls, Mitchell, Huron	1405

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7	Brookings, Sioux Falls, Madison, Huron, Arlington	1406
7	Incoming—, Madison, Miller, Salem, Mitchell, Baltic, Huron, Brookings, Sioux Falls	1407
9	Brookings, Madison	1408
9	Sioux Falls, Mitchell, Huron, Miller, Arlington	1409
10	Brookings, Huron, Mitchell	1410
11	Sioux Falls, Madison, Huron, Mitchell	1411
12	Brookings, Huron, Miller	1412
12	Sioux Falls, Madison, Mitchell, (Fairmont)	1413
13	Brookings, Sioux Falls, Mitchell, Huron, Arlington	1414
13	Sioux Falls, Madison	1415
14	Sioux Falls, Brookings, Huron, Mitchell	1416
14	Incoming—, Mitchell, Brookings, Sioux Falls, Madison, Salem, Huron	1417
16	Miller, Huron, Mitchell	1418
16	Sioux Falls, Madison	1419
17	Brookings, Sioux Falls, Mitchell, Huron	1420
18	Sioux Falls, Madison, Huron, Mitchell	1421
19	Brookings, Huron, Miller, Mitchell	1422
19	Madison, Sioux Falls, Yankton, Flandreau	1423
20	Brookings, Sioux Falls, Mitchell, Huron	1424
21	Brookings, Madison, Sioux Falls, Yankton	1425

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—	Incoming—, Miller, Mitchell, Yankton, Sioux Falls, Brookings, Huron, Salem	1426
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23	Huron, Miller	1429
24	Brookings, Sioux Falls, Salem, Mitchell, Huron, Arlington	1430
25	Sioux Falls, Mitchell, Worthington, Salem	1431
25	Brookings, Madison, Huron, Lake Preston, DeSmet	1432
26	Brookings, Sioux Falls, Yankton	1433
26	Brookings, Madison, Huron, Miller, Tracy	1434
26	Brookings, Sioux Falls, Mitchell	1436
27	Madison, Huron, Miller	1435
28	Brookings	1437
28	Incoming—, Sioux Falls, Mitchell, Brookings, Huron, Salem, Madison, Yankton	1438
31	Sioux Falls, Yankton	1441
31	Huron, Mitchell, Bridgewater	1440
31	Brookings, Madison, Huron, Miller, Elkton, DeSmet	1439
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1	Brookings, Sioux Falls, Mitchell, Huron	1443
2	Sioux Falls, Madison	1444
2	Brookings, Huron, Miller, Mitchell	1445
3	Sioux Falls, Madison, Worthington	1446
3	Brookings, Huron, Mitchell	1447
—	Incoming—, Sioux Falls, Mitchell, Huron, Brookings, Madison, Salem	1449
4	Mitchell, Yankton; Sioux Falls, Dell Rapids, Brookings	1448
6	Brookings, Huron, Miller, St. Lawrence	1450
6	Brookings, Sioux Falls, Madison, Mitchell	1451
7	Brookings, Sioux Falls, Madison, Mitchell, Huron	1452
8	Brookings, Huron, Mitchell, Arlington	1453
8	Sioux Falls, Madison, Worthington	1454
9	Madison, Huron, Miller, Mitchell	1455
9	Brookings	1456
9	Huron	1457
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10	Brookings, Sioux Falls, Mitchell, Huron, DeSmet	1458
11	Brookings, Sioux Falls, Mitchell, Salem, Madison	1459
—	Incoming—, Mitchell, Sioux Falls, Huron, Miller, Brookings, Salem	1460
13	Brookings, Huron, Miller, Arlington, Lake Preston	1461
13	Brookings, Madison, Mitchell, Sioux Falls	1462
14	Brookings, Huron, Mitchell, Sioux Falls	1463
15	Brookings, Madison, Mitchell	1464
16	Brookings, Esmond, Huron, Miller, St. Lawrence	1465
16	Madison, Dell Rapids, Sioux Falls, Mitchell	1466
17	Brookings, Huron, Mitchell	1467
17	Sioux Falls, Yankton, Worthington	1468
18	Sioux Falls, Mitchell, Salem, Wentworth, Worthington	1469
—	Incoming—, Madison, Yankton, Sioux Falls, Mitchell, Huron, Salem, Miller, DeSmet	1470
20	Huron, Miller, DeSmet, Arlington	1471
20	Brookings, Madison, Sioux Falls, Mitchell	1472
21	Brookings, Huron, Mitchell, Sioux Falls, Arlington	1473
22	Salem, Brookings, Sioux Falls, Mitchell, Huron, Madison	1474
23	Brookings, Huron, Miller, Madison, DeSmet, Arlington	1475
23	Flandreau, Dell Rapids, Sioux Falls, Mitchell, Flandreau	1476
24	Sioux Falls, Mitchell, Huron, Worthington	1477
24	Brookings, Huron	1478
—	Incoming—, Salem, Huron, Sioux Falls, Mitchell, Miller, Brookings	1479
27	Sioux Falls, Madison, Mitchell	1480
27	Brookings, Huron, Miller	1481
28	Brookings, Sioux Falls	1482

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29	Sioux Falls, Madison, Yankton	1483
29	Brookings, Huron, Mitchell	1484
30	Brookings, Sioux Falls	1485
30	Brookings, Madison, Huron, Miller	1487

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2	Sioux Falls, Brookings, Madison, Flandreau, Dell Rapids	1488
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2	Arlington, Huron, Mitchell	1490
—	Incoming—, Salem, Huron, Sioux Falls, Mitchell, Madison, Miller, Brookings	1491
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6	Sioux Falls, Yankton, Scotland, Mitchell	1493
7	Huron, Miller, Highmore, Arlington	1494
7	Sioux Falls, Madison, Brookings	1495
8	Sioux Falls, Mitchell	1496
8	Brookings, Huron, Madison, Lake Preston	1497
9	Brookings, Huron, Mitchell, Yankton, Sioux Falls	1498
9	Incoming—, Brookings, Madison, Huron, Sioux Falls, Salem, Miller, Mitchell, Yankton	1499
11	Sioux Falls, Madison, Dell Rapids	1500
11	Brookings, Huron, Miller, Mitchell, Iroquois	1501
11	Sioux Falls	1502
12	Sioux Falls	1503
12	Brookings, Huron, Mitchell	1504
13	Brookings, Huron	1505
13	Madison, Mitchell, Sioux Falls, Worthington, Flandreau	1506
14	Sioux Falls, Madison, Mitchell	1507
14	Brookings, Huron, Miller, Arlington	1508
15	Brookings, Huron, Mitchell, Sioux Falls	1509

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16	Brookings, Cavour, Huron, Mitchell, Madison, Sioux Falls, Lake Preston	1510
16	Incoming—, Brookings, Mitchell, Miller, Sioux Falls, Huron, Dell Rapids, Salem	1511
18	Lake Preston, Brookings, Huron, Mitchell, Madison, Arlington, Flandreau	1512
19	Brookings, Madison, Huron	1513
19	Sioux Falls, Yankton, Alexandria, Mitchell	1514
20	Brookings, Huron, Arlington	1515
20	Sioux Falls, Mitchell, Madison	1516
21	Brookings, Madison, Sioux Falls, Mitchell	1517
21	Brookings, Huron, Miller, Arlington	1518
22	Sioux Falls, Mitchell, Huron, Brookings	1519
23	Dell Rapids, Brookings, Sioux Falls, Mitchell, Madison	1520
23	Incoming—, Brookings, Madison, Huron, Yankton, Sioux Falls, Salem, Mitchell	1521
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25	Brookings, Huron, Miller, Mitchell	1523
24	Madison, Huron	1524
26	Brookings, Sioux Falls	1525
27	Sioux Falls, Madison, Worthington	1526
27	Brookings, Huron, Mitchell, Arlington	1527
28	Sioux Falls, Madison, Brookings	1528
28	Brookings, Huron, Miller, Mitchell	1529
29	Sioux Falls, Mitchell, Huron, Brookings	5230
30	Sioux Falls, Mitchell, Huron, Brookings	5231
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4	Brookings, Madison, Sioux Falls, Mitchell	5238
4	Huron, Miller, Lake Preston	5239
6	Sioux Falls, Madison, Mitchell, Huron, Brookings, Springfield, Vermillion, Huron	5241A
5	Sioux Falls	5241B
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—	Incoming—, Huron, Mitchell, Brookings, Yankton, Miller, Madison, Sioux Falls	5242B
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10	Brookings, Sioux Falls, Mitchell, Huron	5246
12	Huron, Brookings, Arlington, DeSmet	5247
12	Brookings, Madison, Sioux Falls, Mitchell	5248
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12	Sioux Falls, Worthington	5250
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15	Brookings, Madison, Sioux Falls	5255
16	Sioux Falls	5256
16	Brookings, Huron, Mitchell, Madison	5257
17	Brookings, Sioux Falls, Mitchell, Huron, Arlington	5258
18	Huron, Miller	5259
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18	Brookings, Madison, Sioux Falls	5261
19	Sioux Falls, Yankton, Madison	5262
19	Brookings, Huron, Mitchell	5263
20	Brookings, Huron, Mitchell, Madison	5264
20	Sioux Falls	5265
—	Incoming—, Huron, Sioux Falls, Mitchell, Brookings, Madison, Yankton	5266
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23	Huron, Mitchell, Sioux Falls	5269
23	Brookings, Huron, Lake Preston	5270
24	Sioux Falls, Mitchell, Huron, Worthington	5271
25	Madison, Sioux Falls	5272
25	Brookings, Huron, Mitchell	5273
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26	Brookings, Sioux Falls, Mitchell, Huron	5275
27	Arlington, Brookings, Madison, Mitchell, Huron	5276
27	Sioux Falls, Yankton	5277
—	Incoming—, Huron, Sioux Falls, Mitchell, Miller, Madison	5278
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30	Madison, Sioux Falls	5281
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22	Huron, Mitchell, Arlington, DeSmet	5318
23	Brookings, Huron, Arlington, New Ulm	5319
23	Sioux Falls, Madison, Mitchell	5320
24	Sioux Falls, Mitchell, Huron, Madison	5321
26	Sioux Falls, Madison, Mitchell, Bridgewater	5322
—	Incoming—, Sioux Falls, Forestburg, Huron, Madison, Brookings, Mitchell	5322
26	Brookings, Huron, DeSmet	5323
27	Sioux Falls, Beresford	5324
27	Brookings, Arlington, Huron, Mitchell, Madison, Salem	5325
28	Sioux Falls, Mitchell, Huron, Madison	5326
29	Sioux Falls, Yankton	5327
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29	Huron, Mitchell, Arlington, Volga	5329
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5	Sioux Falls, Madison, Huron, DeSmet, Dell Rapids, Wentworth	5338
6	Brookings, Huron, Mitchell, Sioux Falls, Madison	5339
6	Brookings, Madison, Sioux Falls	5340
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8 Incoming—, Huron, Sioux Falls, Mitchell, Madison, Brookings	5346
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10 Brookings, Madison, Mitchell	5347
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12 Brookings, Madison, Mitchell, Huron	5351
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13 Brookings, Huron, Mitchell, Salem, DeSmet	5353
14 Valley Springs, Sioux Falls, Mitchell, Madison, Wentworth	5354
14 Brookings, Huron	5355
15 Brookings, Sioux Falls	5356
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15 Incoming—, Mitchell, Brookings, Sioux Falls, Salem, Madison, Yankton, Huron, Dell Rapids	5358
17 Huron, Mitchell	5359
17 Brookings, Madison, Sioux Falls, Flandreau	5360
18 Sioux Falls, Worthington	5361
18 Brookings, Huron, Mitchell	5362
19 Brookings, Madison, Sioux Falls, Yankton, Mitchell	5363
20 Brookings, Madison	5364
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21 Brookings, Madison, Sioux Falls	5367
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22 Incoming—, Madison, Brookings, Huron, Sioux Falls, Yankton, Mitchell	5370
24 Sioux Falls, Madison, Mitchell	5371
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25 Brookings, Huron	5373A
26 Brookings, Madison, Mitchell, Sioux Falls	5373B
27 Brookings, Huron, Madison, Sioux Falls	5374
28 Sioux Falls, Salem	5375
28 Brookings, Huron, Mitchell, Madison	5376
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28 Brookings, Huron, Mitchell, Arlington, DeSmet	5378
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SHOWING REFERENCES ONLY TO MINNESOTA POINTS

1935

- May 1. Atkinson, Minnesota
- 2. Hill City, Minnesota
- 7. Baker, Minnesota
- 3. Hill City, Minnesota
- 6. Hill City, Minnesota
- 9. Baker, Minnesota
- 14. Hill City, Minnesota
- 15. Hill City, Minnesota
- 21. Hill City, Minnesota
- June 15. Marshall, Minnesota
- 26. Marshall, Minnesota

1937

- March 5. Gibbons, Gaylord, Adrian, Minnesota
- 16. Norwood, Minnesota
- 27. Albert Lea, Minnesota
- April 3. Sleepy Eye, Minnesota
- June 26. Tracy, Minnesota
- July 16. Jackson, Minnesota
- September 18. Worthington, Minnesota
- October 6. Balaton, Lamberton, Minnesota
- November 1. Lamberton, Minnesota
- 5. Springfield, Minnesota
- 8. Worthington, Minnesota
- 24. Slayton, Minnesota
- December 2. Worthington, Minnesota
- 17. Jackson, Worthington, Minnesota
- 23. Lake Crystal, Fairmont, Minnesota

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1938

- January 5. Tracy, Minnesota
- 25. Jackson, Minnesota
- February 7. Worthington, Minnesota
- 10. Fairmount, Mankato, Minnesota

1938

- 11. Ivanhoe, Minnesota
- 19. Worthington, Mankato, Minnesota
- 28. Springfield, Fairmount, Minnesota
- March 1. Redwood Falls, Minnesota
- 7. Springfield, Minnesota
- 16. Worthington, Minnesota
- 17. Worthington, Minnesota
- 23. Lamberton, Redwood Falls, Minnesota
- April 8. Jackson, New Ulm, Marshall, Redwood Falls, Worthington, Minnesota
- 13. Marshall, Worthington, Minnesota
- 14. Redwood Falls, Marshall, Minnesota
- 23. Worthington, Minnesota
- May 2. Worthington, Minnesota
- 12. Fairmount, Minnesota
- 25. Worthington, Minnesota
- 26. Tracy, Minnesota
- June 3. Worthington, Minnesota
- 8. Worthington, Minnesota
- 17. Worthington, Minnesota
- 18. Worthington, Minnesota
- 24. Worthington, Minnesota
- July 13. Worthington, Minnesota
- 27. Worthington, Minnesota
- August 24. Worthington, Minnesota
- September 8. Worthington, Minnesota
- 12. Worthington, Minnesota
- October 12. Worthington, Minnesota
- 17. Worthington, Minnesota
- November 3. Worthington, Minnesota
- 7. Worthington, Minnesota

[fol 201]

STTEE EXHIBIT No. 14—"SHOWING NUMBER OF SHIPMENTS CARRIED BY APPLICANT EACH MONTH, BY REFERENCE TO PRO NUMBERS IN FREIGHT BILLS ISSUED, FOR YEARS 1936, 1937 AND 1938."

Months	1936		Difference
	Beginning PRO. NO.	Ending PRO. NO.	
January	4285	4999	714
February	5000	5499	499
March	5500	6228	728
April	6228	6939	711
May	6940	7758	818
June	7759	8708	949
July	8707	9639	932
August	9640	10596	956
September	10597	11713	1116
October	11714	12940	1226
November	12941	14031	1090
December	14032	14982	950

Total 10,685

Months	1937		Difference
	Beginning PRO. NO.	Ending PRO. NO.	
January	14983	15837	854
February	15838	16587	749
March	16588	17691	1103
April	17692	18647	955
May	18648	19591	943
June	19592	20523	931
July	20524	21431	907
August	21432	22458	1026
September	22459	23624	1165
October	23625	24852	1227
November	24853	26173	1320
December	26174	27115	941

Total 12,121

Months	1938		Difference
	Beginning PRO. NO.	Ending PRO. NO.	
January	27116	28183	1067
February	28184	29302	1118
March	29304	30668	1364
April	30669	31975	1306
May	31976	33186	1210
June	33187	34457	1270
July	34458	35736	1278
August	35737	37342	1605
September	37343	39053	1710
October	39054	41112	2058
November	41113	42716	1603

Total 15,589

January through November, 1938.

[fol. 202]

STYER EXHIBIT No. 15

"Known Shipments Not Listed in Exhibit 3 (Abstract of Freight Bills) but Shown on Exhibit 7

These Shipments Are Shown on Manifests for April, May and June, 1935."

Origin	Destination	Date	Commodity	Pro	Connecting Point
Minneapolis	Huron	4/16/35	Groceries	none	
Minneapolis	Madison	4/24	Gas	none	
Minneapolis	Mitchell	5/1	Gas	none	
Atkinson, Minn.	Huron	5/1	Potatoes	none	
Minneapolis	Huron	5/3	Groceries	none	
Hill City, Minn.	Huron	5/3	Potatoes	none	
Minneapolis	Huron	5/5	Groceries	none	
Minneapolis	Brookings	5/5	Merchandise	none	
Minneapolis	Aberdeen	5/5	Candy	none	
Hill City, Minn.	Huron	5/6	Potatoes	none	
Baker, Minn.	Huron	5/7	Potatoes	none	
St. Paul	Brookings	5/8	Meat prod.	none	
Baker, Minn.	Huron	5/9	Potatoes	none	
Minneapolis	Brookings	5/10	Merchandise	33	
Chicago	Aberdeen	5/13	Candy	48	St. Paul
Hill City, Minn.	Huron	5/14	Potatoes	58	
St. Paul	Brookings	5/15	Meat prod.	78	
Hill City, Minn.	Huron	5/15	Potatoes	71	
St. Paul	Brookings	5/17	Merchandise	104	
Hill City, Minn.	Huron	5/21	Potatoes	none	
Madison	Minneapolis	5/21	Gas	121	
Mitchell	Chicago	6/1	Eggs	none	St. Paul
Minneapolis	Sioux Falls	6/6	Tires	none	
Minneapolis	Sioux Falls	6/7	Tires	none	
St. Paul	Brookings	6/7	Meat products	326	
Sioux Falls	St. Paul	6/10	Printing mach.	none	
Buffalo, N. Y.	Huron	6/22	Wax	none	St. Paul
Minneapolis	Sioux Falls	6/26	Tubular rails	2119	
Minneapolis	Madison	6/29	Bronze tablet	2150	
Hill City, Minn.	Huron	5/2	Potatoes	none	

[fol. 203]

STYER EXHIBIT No. 16

"Supplement to Exhibit 3, Showing Additional Shipments Carried by Applicant in March and April, 1935, Between the Origin and Destination Points Shown."

Origin	Destination	Date	Commodity & Wt.	Pro	Inter-change Point
Minneapolis	Huron	3/29/35	Gas 1,384 lb.	None	
Minneapolis	Mitchell	3/29	Gas 3,000 "	"	
So. St. Paul	Huron	3/26	Milk 8,964 "	1476	
Minneapolis	Mitchell	4/3	Gas 960 "	None	
Mitchell	So. St. Paul	4/5	Eggs 21,280 "	"	
Minneapolis	Mitchell	4/6	Gas 1,545 "	"	
Minneapolis	Madison	4/6	Gas 656 "	"	
Mitchell	So. St. Paul	4/7	Eggs 22,080 "	"	
Mitchell	So. St. Paul	4/8	Eggs 17,920 "	"	
Mitchell	So. St. Paul	4/8	Eggs 10,080 "	"	
Mitchell	So. St. Paul	4/10	Eggs 12,000 "	"	
Mitchell	So. St. Paul	4/10	Eggs 12,320 "	"	
Minneapolis	Huron	4/10	Gas 920 "	"	
Mitchell	So. St. Paul	4/11	Eggs 17,120 "	"	
Mitchell	So. St. Paul	4/13	Eggs 14,880 "	"	
St. Paul	Huron	4/18	Lumber 16,112 "	"	
Minneapolis	Madison	4/22	Gas 440 "	"	
Minneapolis	Madison	4/24	Gas 480 "	"	

This supplement was compiled from records from the files of the following companies:

Commercial Gas Co.....Minneapolis
Minnesota Box Co.....St. Paul
Armour & Co.....South St. Paul
Armour Creameries.....Mitchell, S. D.

[fol. 204]

STYER EXHIBIT No. 17

Supplement to Exhibit 7, Showing Additional Trips Made by Applicant in April and May, 1935, Between Minneapolis and St. Paul, Minnesota, and the South Dakota Points Shown.

[fol. 205]

April 1935

Footnote

1 Mitchell, Huron	1
2 (Incoming) Mitchell	1
3 Mitchell	2
5 Mitchell (Incoming, these two ship-	2
5 Mitchell ments—wt. 21,280 lbs.)	2
6 Huron, Mitchell, Madison	2, 1
7 Mitchell (Incoming, these two ship-	2
7 Mitchell ments—wt. 22,080 lbs.)	2
8 Mitchell (10,080 lbs.)	1
9 Brookings, Huron	1
10 Mitchell (Incoming, these two ship-	2
10 Mitchell ments—wt. 24,320 lbs.)	2
10 Huron	2
11 (Incoming) Mitchell, 17,120 lbs.	2
13 (Incoming) Mitchell, 14,880 lbs.	2
15 Mitchell, Huron, Brookings	1
16 (Incoming) Huron	1
18 Huron 16,112 lbs.	2
19 Huron	1
20 Brookings	1
22 Mitchell, Brookings, Madison	1, 2
23 (Incoming) Mitchell, Huron	1
25 Huron, Mitchell	1

May 1935

1 Brookings	1
2 Mitchell	1
2 (Incoming) Mitchell	1
3 (Incoming) Huron	1
7 (Incoming) Huron, Mitchell	1
9 (Incoming) Mitchell, to.	1
11 (Incoming) Mitchell	1
11 Mitchell, Huron	1
13 (Incoming) Madison, Huron	1, 3
14 (Incoming) Huron, Mitchell	1
15 (Incoming) Huron	1
17 (Incoming) Mitchell	1
18 (Incoming) Huron, Mitchell	1
20 (Incoming) Madison, Mitchell	1
23 Huron, Brookings, Mitchell	1
24 (Incoming) Mitchell, Huron	1
23 (Incoming) Huron	1
27 (Incoming) Huron	1, 3
29 (Incoming) Mitchell, Miller, Huron	1
31 (Incoming) Huron	1

- 1 Refers to reconstruction from bills in our files
2 Refers to reconstruction from records of customers
3 Refers to reconstruction from manifests in our files

[fol. 206]
June 1935

		Footnote
3	(Incoming) Mitchell, Huron	1
4	(Incoming) Mitchell	1
5	(Incoming) Mitchell, Huron	1
7	(Incoming) Mitchell, Huron	1
8	(Incoming) Mitchell, Huron	1, 3
10	(Incoming) Huron	1
12	(Incoming) Huron	1
13	(Incoming) Mitchell	1
14	(Incoming) Huron	1
16	(Incoming) Mitchell	1
18	(Incoming) Huron	1
19	(Incoming) Mitchell	1
20	(Incoming) Mitchell	1
21	(Incoming) Huron	1
22	(Incoming) Wallace, S. D., Mitchell	1
23	(Incoming) Mitchell	1
24	(Incoming) Huron	1
26	(Incoming) Mitchell	1
27	(Incoming) Huron	1
1	Refers to reconstruction from bills in our files	
2	Refers to reconstruction from records of customers	
3	Refers to reconstruction from manifests in our files	

[fol. 207]

ABSTRACT OF STYER EXHIBIT No. 18

This exhibit is entitled: "Abstract of Freight Bills Showing Shipments Carried by Applicant Between October 16, 1935, and December 31, 1935, Inclusive."

This abstract shows, for each month covered by the exhibit, the number of shipments of general commodities carried by Styer between the listed origins and destinations or interchange points. Where an interchange point is shown it indicates that Styer there received from or delivered to another carrier a shipment originating or terminating beyond such interchange point.

At the end of this abstract is a more detailed statement from the exhibit showing all shipments to or from Minnesota points, exclusive of the Twin Cities.

[fol. 208]

EXHIBIT 18

Origin	Destination	No. of Shipments	Interchange Point
October, 1935			
Huron	St. Paul	7	
Mitchell	Minneapolis	3	
Mitchell	St. Paul	7	
St. Paul	Huron	54	
Minneapolis	Huron	78	
Minneapolis	Iroquois, S. D.	3	
Minneapolis	Mitchell	27	
St. Paul	Mitchell	40	
St. Paul	Brookings	7	
Minneapolis	Forestburg, S. D.	1	
Minneapolis	Yankton	4	
Duluth	Parkston	2	St. Paul
So. St. Paul	Huron	6	
St. Paul	Emery, S. D.	1	
Huron	Minneapolis	17	
Huron	Chicago	4	St. Paul
Eau Claire, Wis.	Huron	6	St. Paul
Eau Claire, Wis.	Mitchell	8	St. Paul
Minneapolis	Brookings	12	
Minneapolis	Sioux Falls	10	

Origin	Destination	No. of Shipments	Interchange Point
Minneapolis	Rapid City	1	Sioux Falls
Duluth	Mitchell	5	St. Paul
Duluth	Davis, S. D.	1	St. Paul
Minneapolis	Pierre	1	
Chicago	Huron	3	St. Paul
Columbus, O.	Huron	2	St. Paul
St. Paul	Sioux Falls	3	
Minneapolis	Arlington	3	
St. Paul	Vermillion	1	
Dodge Center	Huron	1	
St. Paul	Yankton	4	
Duluth	Hartford	3	St. Paul
Huron	Aitkin	1	
Huron	Brownston	1	
Mitchell	Chicago	2	St. Paul
Mitchell	Kenosha	2	St. Paul
Mitchell	Racine	2	St. Paul
Mitchell	Waukegan	2	St. Paul
St. Paul	Pierre	1	Huron
St. Paul	Lennox	1	
St. Paul	Aberdeen	1	Huron
Minneapolis	De Smet	2	
Duluth	Colton	1	St. Paul
St. Paul	Minneapolis	1	
Columbus	De Smet	1	St. Paul
Akron, O.	Huron	1	St. Paul
Minneapolis	Madison	1	
Minneapolis	Mennö	1	

[fol. 209]

November, 1935

Minneapolis	Brookings	41	
St. Paul	Mitchell	58	
Minneapolis	Mitchell	58	
So. St. Paul	Huron	12	
Duluth	Mitchell	10	St. Paul
St. Paul	Huron	83	
Minneapolis	Huron	146	
Chicago	Sioux Falls	5	St. Paul
Mitchell	Minneapolis	2	
Mitchell	St. Paul	10	
Huron	St. Paul	7	
St. Paul	Yankton	6	
Eau Claire, Wis.	Huron	4	St. Paul
St. Paul	Pierre	4	Huron
Sioux Falls	St. Paul	1	
St. Paul	Brookings	11	
Minneapolis	Arlington	3	
St. Paul	Sioux Falls	8	
Minneapolis	Sioux Falls	11	
Minneapolis	Chamberlain	2	
Mitchell	Waukegan	2	St. Paul
Mitchell	Kenosha, Wis.	2	St. Paul
Mitchell	Racine, Wis.	2	St. Paul
Huron	Minneapolis	22	
Huron	Chicago	8	St. Paul
Mitchell	Chicago	1	St. Paul
Brookings	Minneapolis	1	
Minneapolis	Yankton	9	
Minneapolis	Miller	1	
Sioux Falls	Minneapolis	1	
Chicago	Flandreau	1	St. Paul
Minneapolis	Pierre	1	Huron
Minneapolis	St. Paul	1	
Chicago	Pierre	1	St. Paul

Origin	Destination	No. of Shipments	Interchange Point
Chicago	Huron	7	St. Paul
Chicago	Mitchell	4	St. Paul
Mitchell	Hastings, Nebr.	1	St. Paul
Mitchell	Duluth	1	St. Paul
Eau Claire, Wis.	Mitchell	4	St. Paul
Chicago	Brookings	4	St. Paul
Wilkes Barre	Huron	2	St. Paul
Minneapolis	Lake Preston	1	
Akron, Ohio	Huron	11	St. Paul
Minneapolis	Iroquois	2	
Minneapolis	Madison	3	
Duluth	Colton	1	St. Paul
Marshall	Huron	1	
Minneapolis	Forestburg	1	
St. Paul	Miller	1	
Mitchell	Huron	1	
Akron, Ohio	Mitchell	4	St. Paul
Akron, Ohio	Sioux Falls	3	St. Paul
Yankton	Minneapolis	1	
Huron	Montevideo	1	
St. Paul	Vermillion	1	
St. Paul	Canton	1	
South Bend, Ind.	Huron	1	St. Paul
Pontiac, Mich.	Mitchell	1	St. Paul
Minneapolis	Bhnt	1	
St. Paul	Rapid City	2	
Minneapolis	Colton	1	
Minneapolis	Scotland, S. D.	1	
Minneapolis	Carpenter	1	
Marshall	Huron	1	
Winona	Huron	1	St. Paul
Chicago	Beresford	1	St. Paul
Minneapolis	De Smet	1	
Akron, Ohio	Madison	1	St. Paul

[fol. 210]

December, 1935

Huron	Minneapolis	25	
Mitchell	Minneapolis	3	
Mitchell	St. Paul	14	
Chicago	Sioux Falls	8	St. Paul
Columbus	Huron	1	St. Paul
Minneapolis	Mitchell	47	
Minneapolis	Huron	138	
St. Paul	Mitchell	69	
Minneapolis	Yankton	4	
Minneapolis	Hartford	1	
St. Paul	Sioux Falls	24	
St. Paul	Huron	86	
Minneapolis	Brookings	42	
Chicago	Huron	3	St. Paul
Minneapolis	Pierre	1	
Akron, Ohio	Huron	6	St. Paul
Minneapolis	Sioux Falls	11	
St. Paul	Brookings	19	
Columbus, Ohio	Sioux Falls	1	St. Paul
Huron	Chicago	5	
Huron	So. St. Paul	2	
St. St. Paul	Huron	9	
St. Cloud	Huron	1	St. Paul
Winona	Huron	2	St. Paul
Eau Claire	Sioux Falls	5	St. Paul
St. Paul	Rapid City	2	
Akron, Ohio	Sioux Falls	3	St. Paul
Minneapolis	Forestburg, S. D.	1	

Origin	Destination	No. of Shipments	Interchange Points
Duluth	Mitchell	8	St. Paul
Eau Claire	Huron	4	St. Paul
Eau Claire	Mitchell	4	St. Paul
Huron	St. Paul	9	
Yankton	Minneapolis	1	
Rapid City	Mankato	1	
Minneapolis	Madison	2	
Minn. Transfer	Vermillion	1	
St. Paul	Yankton	1	
Minneapolis	Iroquois	4	
Huron	Montevideo	1	
St. Paul	Lake Preston	1	
St. Paul	Pierre	1	
Minneapolis	Volga	1	
Albert Lea	Brookings	1	
Duluth	Brookings	1	St. Paul
Minneapolis	Forestburg	1	
Brookings	Minneapolis	1	
Huron	Minn. Transfer	3	
Brookings	St. Paul	1	
St. Paul	Vermillion	1	
Chicago	Vermillion	1	St. Paul
St. Paul	Chamberlain	1	Mitchell
Duluth	Humbolt	1	St. Paul
Duluth	Hartford	1	St. Paul
St. Paul	Beresford	1	
St. Paul	Yankton	4	
Minneapolis	Beresford	1	
Akron, Ohio	Mitchell	5	St. Paul
[fol. 211]			
Minneapolis	Highmore	1	
Minneapolis	De Smet	1	
Huron	Duluth	1	
Fargo, N. D.	Huron	1	
Minneapolis	Arlington	1	
Chicago	Mitchell	1	St. Paul
Huron	Brookings	1	
Huron	St. Louis Park	1	
Chicago	Brookings	1	St. Paul

[fol. 212] PARTIAL ABSTRACT OF STYER EXHIBIT No. 18

Showing All Shipments to and from Minnesota Points Exclusive of the Twin Cities

Date	Origin	Destination	Commodity
Oct. 19, 1935	Dodge Center, Minn.	Huron, S. D.	Canned Goods
Dec. 10, 1935	Rapid City, S. D.	Mankato, Minn.	Beer empties
Dec. 12, 1935	Huron, S. D.	Montevideo, Minn.	Poultry

[fol. 213]

ABSTRACT OF STYER EXHIBIT No. 19

This exhibit is entitled: "Abstract of Freight Bills Showing Shipments Carried by Applicant in Month of October, 1938."

This abstract shows, for the month covered by the exhibit, the number of shipments of general commodities carried by Styer between the listed origins and destinations or interchange points. Where an interchange point is shown it indicates that Styer there received from or delivered to another carrier a shipment originating or terminating beyond such interchange point.

At the end of this abstract is a more detailed statement from the exhibit showing all shipments to or from Minnesota points exclusive of the Twin Cities.

[fol. 214]

Origin	Destination	Number of Ship- ments	Interchange Points
October, 1938			
St. Paul	Mitchell	89	
St. Paul	Huron	49	
St. Paul	Madison	42	
St. Paul	Brookings	69	
St. Paul	Sioux Falls	88	
St. Paul	Yankton	22	
St. Paul	Humbolt	1	
St. Paul	Pierre	1	Huron
St. Paul	Ethan, S. Dak.	1	
St. Paul	Redfield	1	Huron
St. Paul	De Smet	3	
St. Paul	Viborg, S. Dak.	1	
St. Paul	Salem	4	
St. Paul	Gregory	1	
St. Paul	Irene	1	
St. Paul	Arlington	1	
St. Paul	Flandreau	1	
St. Paul	Wessington Springs	1	
St. Paul	Beresford	1	
St. Louis	Brookings	4	St. Paul
St. Louis	Mitchell	6	St. Paul
St. Louis	Sioux Falls	22	St. Paul
St. Louis	Yankton	2	St. Paul-Sioux Falls
St. Louis	Huron	8	
St. Louis	Tripp, S. Dak.	1	Mitchell
St. Louis	Vermillion	1	
St. Louis Park	Huron	1	
St. Louis	Madison	1	St. Paul
Chicago	Luverne	1	St. Paul
Chicago	Beresford	2	
Chicago	Howard	1	
Chicago	Highmore	1	
Cincinnati, Ohio	Canton, S. Dak.	2	St. Paul
Cleveland, Ohio	Mitchell	1	St. Paul
Columbus, Ohio	Brookings	2	St. Paul
Cincinnati, Ohio	Sioux Falls	2	St. Paul
Arlon, Ohio	Sioux Falls	9	
Chicago	Mitchell	26	St. Paul
Chicago	Flandreau	2	St. Paul
Chicago	Yankton	32	St. Paul
Chicago	Springfield, S. Dak.	1	Sioux Falls-St. Paul
Chicago	Menno, S. Dak.	1	St. Paul
Chicago	Sioux Falls	179	St. Paul
Chicago	Chamberlain, S. D.	1	St. Paul-Sioux Falls
Chicago	Pierre, S. Dak.	10	Huron
Chicago	Gregory	1	St. Paul
Chicago	Huron	71	St. Paul
Chicago	Winner	5	St. Paul
Chicago	Madison	14	St. Paul
Chicago	Canton, S. Dak.	2	St. Paul
Chicago	Brookings	30	St. Paul
Chicago	Dell Rapids, S. Dak.	2	St. Paul
Chicago	Arlington	1	St. Paul
Chicago	Hot Springs, S. Dak.	1	Huron-St. Paul
Chicago	Wentworth	1	St. Paul
Chicago	Redfield, S. Dak.	2	St. Paul-Huron
Chicago	Armour, S. Dak.	2	St. Paul-Mitchell
Chicago	Tindall, S. Dak.	1	St. Paul-Mitchell
Chicago	Vermillion	12	St. Paul
Columbus, Ohio	Huron	3	St. Paul
Cincinnati, Ohio	Huron	1	St. Paul
Barberton, Ohio	Pierre	1	St. Paul-Huron

[fol. 215]

Origin	Destination	Number of Ship- ments	Interchange Points
October, 1938 (Cont.)			
Akron, Ohio	Huron	1	St. Paul
Cleveland, Ohio	Huron	4	St. Paul
Akron, Ohio	Vermillion	2	St. Paul
Columbus, Ohio	Sioux Falls	8	St. Paul
Barberton, Ohio	Yankton	1	St. Paul
Akron, Ohio	Mitchell	4	St. Paul
Akron, Ohio	Brookings	3	St. Paul
Barberton, Ohio	Madison	1	St. Paul
Columbus, Ohio	Mitchell	1	St. Paul
Akron, Ohio	Canton	1	St. Paul
Columbus, Ohio	Yankton	1	St. Paul
Akron, Ohio	Iroquois	2	St. Paul
Akron, Ohio	Highmore, S. Dak.	1	St. Paul
Cincinnati, Ohio	Arlington	1	St. Paul
Minneapolis	Chamberlain	2	Huron
Minneapolis	Kimball	1	
Minneapolis	Virgil, S. Dak.	1	
Minneapolis	Canton	1	
Minneapolis	Redfield, S. Dak.	1	Huron
Detroit, Mich.	Chamberlain	2	St. Paul-Huron
Jackson, Mich.	Sioux Falls	2	St. Paul
Indianapolis	Platte, S. Dak.	1	St. Paul
Indianapolis	Gann Valley	1	St. Paul
Indianapolis	Vermillion	1	St. Paul
Minneapolis	Yankton	20	
Minneapolis	Onida	1	
Minneapolis	Mount Vernon, S. Dak.	1	
Minneapolis	Wessington	1	
Minneapolis	Davis, S. Dak.	1	
Minneapolis	Madison	34	
Minneapolis	Centerville	1	
Minneapolis	Elk Point	1	
Minneapolis	Trent, S. Dak.	1	
Minneapolis	Pierre	4	Huron
Minneapolis	Seneca	1	
Minneapolis	Sioux Falls	75	
Minneapolis	Irene	1	
Minneapolis	Huron	99	
Minneapolis	Brookings	89	
Minneapolis	Arlington	7	
Minneapolis	Vermillion	1	
Minneapolis	Mitchell	70	
Minneapolis	De Smet	4	
Minneapolis	Flandreau	4	
Minneapolis	Tyndall	1	
Minneapolis	Dell Rapids	1	
Minneapolis	Iroquois	1	
Minneapolis	Highmore	3	
Minneapolis	Gettysburg	4	
Minneapolis	Lake Preston	1	
Minneapolis	Wessington Springs	2	
Minneapolis	Salem	2	
Minneapolis	Howard	3	
Minneapolis	Scotland	1	
Minneapolis	Marion	1	
Sioux Falls	St. Paul	16	
Sioux Falls	Minneapolis	9	
Sioux Falls	Chicago	3	St. Paul
Sioux Falls	Rockford, Ill.	1	St. Paul
Sioux Falls	St. Louis	1	St. Paul

Origin	Destination	Number of Ship- ments	Interchange Points
Fort Wayne	Brookings	2	
Fort Wayne	Sioux Falls	4	
Kalamasoo	Mitchell	2	St. Paul

October, 1938 (Cont.)

Detroit	Sioux Falls	5	St. Paul
Detroit	Yankton	1	St. Paul
Detroit	Huron	4	St. Paul
Indianapolis	Dell Rapids	1	St. Paul
Indianapolis	Onida, S. Dak.	1	St. Paul
Griffith, Ind.	Sioux Falls	4	St. Paul
Zion, Ind.	Sioux Falls	1	St. Paul
Lansing, Mich.	Brookings	1	St. Paul
Holland, Mich.	Brookings	1	St. Paul
Holland, Mich.	Valley Springs	1	St. Paul
Detroit	Mitchell	6	St. Paul
Muskegon, Mich.	Yankton	1	St. Paul
Indianapolis	Sioux Falls	7	St. Paul
South Bend	Sioux Falls	1	St. Paul
Indianapolis	Huron	1	St. Paul
Flat Rock, Mich.	Sioux Falls	1	St. Paul
Mitchell	Chicago	10	St. Paul
Mitchell	Minneapolis	5	
Mitchell	St. Paul	7	
Mitchell	South St. Paul	1	
Mitchell	Eau Claire	1	St. Paul
Eau Claire	Madison	4	St. Paul
Brainerd, Minn.	Mitchell	1	St. Paul
Tonawanda, N. Y.	Sioux Falls	1	St. Paul
Eau Claire	Yankton	12	St. Paul
Eau Claire	Sioux Falls	13	St. Paul
Zion, Ill.	Sioux Falls	1	St. Paul
Eau Claire	Mitchell	7	St. Paul
Eau Claire	Huron	6	St. Paul
Owensboro, Ky.	Sioux Falls	1	St. Paul
Eau Claire	Brookings	7	St. Paul
Bridgeport, Conn.	Sioux Falls	1	St. Paul
Tona, N. Y.	Sioux Falls	1	St. Paul
New York	Sioux Falls	3	St. Paul
New York	Yankton	1	St. Paul
Jackson, Fla.	Sioux Falls	1	St. Paul
Stl. Crk., Mich.	Huron	1	St. Paul
New Haven	Huron	1	St. Paul
New York	Mitchell	1	St. Paul
Dubuque	Pierre	3	St. Paul
Des Moines	Mitchell	3	St. Paul
Clinton, Ia.	Huron	1	St. Paul
Clinton, Ia.	Sioux Falls	6	St. Paul
Clinton, Ia.	Yankton	1	St. Paul
Des Moines	Sioux Falls	7	St. Paul
Des Moines	Yankton	2	St. Paul
Des Moines	Huron	1	St. Paul
Des Moines	Madison	1	St. Paul
Des Moines	Brookings	1	St. Paul
Des Moines	Arlington	1	St. Paul
Carthage, Mo.	Sioux Falls	1	St. Paul
Hastings	Brookings	1	
Salem, S. Dak.	St. Paul	4	
Cedar Rapids, Ia.	Sioux Falls	1	St. Paul
Cedar Rapids, Ia.	Mitchell	1	St. Paul
Dubuque, Ia.	Sioux Falls	6	St. Paul
Dubuque	Huron	3	St. Paul

Origin	Destination	Number of Ship- ments	Interchange Points
Dubuque	Yankton	3	St. Paul
Dubuque	Mitchell	2	St. Paul
Dubuque	Madison	2	St. Paul
Dubuque	Onida	1	St. Paul
Dubuque	Mandreaux	2	St. Paul
Dubuque	Brookings	1	St. Paul

[fol. 217]

October, 1938 (Cont.)

Davenport, Ia.	Mitchell	1	St. Paul
Davenport	De Smet	2	St. Paul
Davenport	Wessington Springs	1	St. Paul
Davenport	Sioux Falls	11	St. Paul
Davenport	Artesian, S. Dak.	1	St. Paul
Davenport	Madison	3	St. Paul
Davenport	Howard	1	St. Paul
Davenport	Bridgewater	1	St. Paul
Davenport	Parkston	1	St. Paul
Davenport	Colome, S. Dak.	2	St. Paul
Davenport	Tyndall	1	St. Paul
Davenport	Brookings	1	St. Paul
Davenport	Huron	1	St. Paul
Davenport	Alpena	2	St. Paul
Davenport	Woonsocket, S. Dak. ..	1	St. Paul
Davenport	Highmore	1	St. Paul
Davenport	Wessington	1	St. Paul
Davenport	Miller	1	St. Paul
Davenport	Harrold	1	St. Paul
Davenport	Faultkton	1	St. Paul
Davenport	Spencer	1	St. Paul
Davenport	Centerville, S. Dak.	1	St. Paul
Davenport	Salem	1	St. Paul
Davenport	Plankinton, S. Dak.	1	St. Paul
Davenport	Humbolt, S. Dak.	1	St. Paul
Rockford	Sioux Falls	1	St. Paul
Freeport, Ill.	Sioux Falls	2	St. Paul
Rock Island	Mitchell	5	St. Paul
Rock Island	Brandt, S. Dak.	1	St. Paul
Rock Island	Sioux Falls	11	St. Paul
Rock Island	Winner	1	St. Paul
Rock Island	Brookings	1	St. Paul
Rock Island	Armour, S. Dak.	1	St. Paul
Rock Island	Dell Rapids	2	St. Paul
Rock Island	Rockham, S. Dak.	1	St. Paul
East Moline, Ill.	Sioux Falls	1	St. Paul
Moline, Ill.	Sioux Falls	1	St. Paul
Centralia, Ill.	Brookings	1	St. Paul
Coal City, Ill.	Mitchell	1	St. Paul
Huron	Minneapolis	10	
Huron	St. Paul	5	
Huron	South St. Paul	5	
Huron	Chicago	1	St. Paul
Huron	Anoka	1	
South St. Paul	Huron	5	
South St. Paul	Mitchell	7	
Winona, Minn.	Mitchell	1	St. Paul
Duluth	De Smet	1	St. Paul
Winona, Minn.	Madison	3	St. Paul
Winona, Minn.	Brookings	4	St. Paul
Winona, Minn.	Wentworth, S. Dak.	2	St. Paul
St. Cloud, Minn.	Mitchell	1	St. Paul
St. Cloud, Minn.	Huron	1	
Minnesota Transfer	Brookings	1	

Origin	Destination	Number of Shipments	Interchange Points
Minnesota Transfer	Huron	1	
Minnesota Transfer	Mitchell	1	
Brookings	Wittenberg, Wis.	1	St. Paul
Brookings	Minneapolis	14	
Dell Rapids	Minneapolis	1	
Brookings	St. Paul	2	

[fol. 218]

October, 1938 (Cont.)

Brookings	Eau Claire	1	St. Paul
Bun Prairie, Wis.	Sioux Falls	2	St. Paul
Anoka, Minn.	Huron	1	
Anoka, Minn.	Mitchell	1	
Anoka, Minn.	Brookings	1	
Anoka, Minn.	Sioux Falls	1	
Wausau, Wis.	Sioux Falls	1	
Madison	St. Paul	4	
Madison	Mitchell	2	
Madison	Minneapolis	10	
Madison	Sioux Falls	2	
Madison	Huron	1	
La Crosse, Wis.	Madison	1	St. Paul
Milwaukee, Wis.	Sioux Falls	5	St. Paul
Milwaukee	Brookings	4	
Milwaukee	Worthington, Minn.	3	
Milwaukee	Huron	6	
Milwaukee	Yankton	1	
Marshalltown, Ia.	Sioux Falls	1	St. Paul
Kansas City	Brookings	2	St. Paul
Racine, Wis.	Sioux Falls	2	St. Paul
Bloomer, Wis.	Mitchell	1	St. Paul
Kansas City	Mitchell	3	St. Paul
Kansas City	Huron	2	St. Paul
Kansas City	Sioux Falls	1	St. Paul
Yankton	Eau Claire	1	St. Paul
Yankton	Minneapolis	3	
East St. Louis	Sioux Falls	1	St. Paul
Ralston	Huron	1	
Racine, Wis.	Huron	1	St. Paul
Milwaukee	Madison	2	St. Paul
Pierre	Minneapolis	1	Huron
Milwaukee	Mitchell	1	St. Paul
Vermillion	Chicago	1	St. Paul

[fol. 219]

ABSTRACT OF STYER EXHIBIT No. 20

This exhibit is entitled: "Abstract of Freight Bills Showing Shipments Carried by Applicant in Month of November, 1938."

This abstract shows, for the month covered by the exhibit, the number of shipments of general commodities carried by Styer between the listed origins and destinations or interchange points. Where an interchange point is shown it indicates that Styer there received from or delivered to another carrier a shipment originating or terminating beyond such interchange point.

At the end of this abstract is a more detailed statement from the exhibit showing all shipments to or from Minnesota points, exclusive of the Twin Cities.

Origin	Destination	No. of Shipments	Interchange Points
[fol. 220] November, 1938			
Minneapolis	Sioux Falls	79	
Minneapolis	Brookings	87	
St. Paul	Mitchell	80	
Freeport, Ill.	Mitchell	8	St. Paul
Minneapolis	Mitchell	66	
Minneapolis	Yankton	17	Sioux Falls
Minneapolis	Huron	85	
Zion, Ill.	Sioux Falls	1	Minneapolis
Davenport, Ia.	Vermillion	2	St. Paul-Sioux Falls
Davenport	Yankton	3	St. Paul-Sioux Falls
St. Paul	Madison	47	
St. Paul	Sioux Falls	87	
St. Paul	Brookings	47	
Milwaukee	Worthington	7	Minneapolis
St. Paul	Huron	69	
Milwaukee	Brookings	3	Minneapolis
Minn. Transfer	Brookings	2	
East Moline	Sioux Falls	2	St. Paul
Des Moines	Yankton	2	St. Paul-Sioux Falls
Chicago	Sioux Falls	114	St. Paul
Chicago	Vermillion	9	St. Paul
Sioux Falls	St. Paul	11	
Sioux Falls	Minneapolis	5	
Minneapolis	Madison	43	
Minneapolis	Flandreau	6	
Minneapolis	Woonsocket, S. D.	1	
Detroit, Mich.	Sioux Falls	3	St. Paul
Detroit, Mich.	Huron	1	St. Paul
Detroit, Mich.	Pierre, S. D.	1	St. Paul
Minneapolis	De Smet	3	
Minneapolis	Redfield, S. D.	4	
Minneapolis	Tripp, S. D.	1	
Minneapolis	Hartford, S. D.	1	
Minneapolis	Chamberlain	4	
Minneapolis	Arlington	4	
Minneapolis	Washington Springs	2	
Chicago	Brookings	19	St. Paul
Chicago	Huron	34	St. Paul
Chicago	Redfield	4	St. Paul
Chicago	Yankton	18	St. Paul
Chicago	Madison	5	St. Paul
Chicago	Chamberlain	1	St. Paul
Madison, Ind.	Sioux Falls	1	Minneapolis
Madison	Minneapolis	7	
Madison	St. Paul	2	
St. Paul	Howard, S. D.	3	
St. Paul	Bridgewater, S. D.	2	
St. Paul	Yankton	26	
St. Paul	Woonsocket, S. D.	1	
So. St. Paul	Huron	7	
Eau Claire	Yankton	5	St. Paul-Sioux Falls
Eau Claire	Mitchell	9	St. Paul
Eau Claire	Brookings	4	St. Paul
Eau Claire	Sioux Falls	7	St. Paul
Eau Claire	Madison	3	St. Paul
Eau Claire	Huron	4	St. Paul
[fol. 221]			
Mitchell	West Bend, Ind.	1	St. Paul
Mitchell	St. Paul	8	
Mitchell	Minneapolis	10	

Origin	Destination	No. of Shipments	Interchange Points
November, 1938			
Brookings	Minneapolis	13	
Brookings	Shorewood, Wis.	1	St. Paul
Brookings	Olney, Ill.	1	St. Paul
Brookings	Redwing	1	St. Paul
Brookings	St. Paul	2	
Brookings	Kansas City	1	St. Paul
Chicago	Mitchell	17	St. Paul
Chicago	Fort Pierre	1	St. Paul
Chicago	Hartford, S. D.	1	St. Paul
Chicago	Armour	3	St. Paul
Chicago	Winner, S. D.	3	St. Paul
Chicago	Ravinia, S. D.	1	Minneapolis
Chicago	Gettysburg	1	Minneapolis
Chicago	Pierre	4	Minneapolis
Chicago	Lake Preston	1	Minneapolis
Chicago	Beresford	3	Minneapolis
Chicago	Valley Springs, S. D.	1	St. Paul
Chicago	Martin, S. D.	1	St. Paul
Chicago	Faulton, S. D.	1	St. Paul
Chicago	Dell Rapids, S. D.	1	St. Paul
Chicago	Parker	2	
Chicago	Tripp, S. D.	1	Minneapolis
Indianapolis	Sioux Falls	3	St. Paul
Elgin, Ill.	Mitchell	1	St. Paul
Dubuque, Ia.	Sioux Falls	4	St. Paul
Akron, Ohio	Sioux Falls	2	St. Paul
Barberton, Ohio	Sioux Falls	3	St. Paul
Akron, Ohio	Brookings	5	St. Paul
Winona	Wentworth	2	St. Paul
Sun Prairie, Wis.	Sioux Falls	1	St. Paul
Dubuque, Ia.	Huron	2	Minneapolis
Clinton, Ia.	Sioux Falls	3	Minneapolis
Minn. Transfer	Arlington	2	
Cedar Rapids	Mitchell	1	St. Paul
Winona	Brookings	8	St. Paul
Davenport	Sioux Falls	5	St. Paul
Des Moines	Sioux Falls	9	St. Paul
Yankton	Minneapolis	1	
Mitchell	Chicago	10	St. Paul
Huron	St. Paul	2	
Huron	Minneapolis	6	
Rock Island, Ill.	Iroquois	1	St. Paul
Minn. Transfer	Mitchell	2	
Minn. Transfer	Viborg, S. D.	2	
St. Louis	Sioux Falls	20	St. Paul
Moline, Ill.	Sioux Falls	2	St. Paul
Dubuque, Ia.	Madison	3	St. Paul
St. Paul	Canova, S. D.	1	
Rock Island	Sioux Falls	8	St. Paul
St. Louis	Yankton	2	St. Paul
St. Louis	West Sioux Falls	1	St. Paul
Kansas City	Brookings	1	St. Paul
St. Louis	Brookings	5	St. Paul
Gary, Ind.	Huron	1	St. Paul
Hammond, Ind.	Yankton	1	St. Paul
St. Louis Park	Huron	1	
Minneapolis	Canton	1	
Minneapolis	Dell Rapids	1	
Minneapolis	Beresford	1	
Minneapolis	Howard	7	
St. Paul	Canton	5	
Des Moines	Aurora, S. D.	1	St. Paul

[fol. 222]	Origin	Destination	No. of Shipments	Interchange Points
	November, 1938 (Cont.)			
	Des Moines	Brookings	2	St. Paul
	Kansas City	Winner	2	St. Paul
	Minneapolis	Kimball, S. D.	1	
	Kansas City	Huron	2	St. Paul
	St. Louis	Lennox	2	St. Paul
	Des Moines	Madison	1	St. Paul
	Holland, Mich.	Sioux Falls	2	St. Paul
	Holland, Mich.	Brookings	2	St. Paul
	Chicago	Howard, S. D.	1	Minneapolis-Madison
	Milwaukee	Huron	4	Minneapolis
	Milwaukee	Madison	3	Minneapolis
	Minneapolis	Letcher, S. D.	2	
	Cedar Rapids, Ia.	De Smet	2	St. Paul
	Sioux Falls	Montevideo, Minn.	1	
	Salem	St. Paul	4	
	Duluth	Dell Rapids	1	St. Paul
	Minneapolis	De Smet	1	
	St. Louis	Mitchell	6	St. Paul
	Dubuque, Ia.	Yankton	3	St. Paul
	Minneapolis	Vayland, S. D.	1	
	Fort Wayne, Ind.	Brookings	1	St. Paul
	LaCrosse, Wis.	Sioux Falls	1	St. Paul
	Milwaukee, Wis.	Sioux Falls	2	St. Paul
	Sioux Falls	Indianapolis, Ind.	1	
	Huron	Kansas City	1	Minneapolis
	Mitchell	Freeport, Ill.	1	Minneapolis
	Cloquet	Mitchell	1	
	Minneapolis	Centerville	1	
	St. Louis	Huron	2	Minneapolis
	Rock Island	Huron	1	Minneapolis
	St. Louis	Beresford	1	Minneapolis
	Davenport	Mitchell	1	St. Paul
	Freeport, Ill.	Elk Point	1	St. Paul
	Freeport, Ill.	Sioux Falls	3	St. Paul
	Dubuque, Ia.	Weisington	1	St. Paul
	Indianapolis, Ind.	Huron	1	St. Paul
	St. Paul	Weisington Springs	4	
	Columbus, Ohio	Mitchell	1	St. Paul
	Minneapolis	Salem	5	
	Cedar Rapids, Ia.	Yankton	1	St. Paul
	Kansas City	Mitchell	2	St. Paul
	Columbus, Ohio	Sioux Falls	6	Minneapolis
	St. Paul	Pierre, S. D.	2	Huron
	St. Paul	Chamberlain	1	Mitchell
	Albert Lea, Minn.	Huron	2	St. Paul
	Cheboygan, Mich.	Huron	1	St. Paul
	Rock Island	Madison	1	St. Paul
	St. Paul	Flandreau, S. D.	2	
	Des Moines, Ia.	Wentworth	1	St. Paul
	Minneapolis	Lake Preston, S. D.	1	
	Cleveland, Ohio	Sioux Falls	1	St. Paul
	Winona	Madison	2	
	Chippewa Falls	Huron	1	
	Arlington	Chicago	2	St. Paul
	Salem	Chicago	4	St. Paul
	Minneapolis	Vermillion	3	
	Minneapolis	Alpena	3	
	Minneapolis	Fedora, S. D.	1	
	Ludington, Mich.	Redfield	1	St. Paul
	Dubuque	Brookings	1	St. Paul
	Duluth	Mitchell	1	St. Paul

Origin	Destination	No. of Shipments	Interchange Points
[fol. 223] November, 1938			
Janesville, Wis.	Huron	1	St. Paul
Kansas City	Sioux Falls	3	St. Paul
Barberton, Ohio	Arlington	1	St. Paul
Volga, S. D.	Chicago	1	
Mansfield, O.	Sioux Falls	1	St. Paul
Indianapolis	Winner	1	St. Paul
Clinton, Ia.	Chamberlain, S. D.	1	St. Paul
Rockford, Ill.	Sioux Falls	3	St. Paul
Cincinnati, O.	Sioux Falls	1	St. Paul
Ludington, Mich.	Madison	1	St. Paul
Rock Island	Dell Rapids	1	St. Paul
Sturgis, Mich.	Brookings	1	St. Paul
Winnipeg	Sioux Falls	1	St. Paul
Frederickstown, Mo.	Sioux Falls	1	
Grand Rapids	Valley Springs, S. D.	1	Minneapolis
Minneapolis	Ethan	1	
Minneapolis	Munda, S. D.	1	
Nashville, Tenn.	Sioux Falls	1	St. Paul
Muncie, Ind.	Sioux Falls	1	St. Paul
Minneapolis	Gettysburg	1	
St. Paul	Arlington	1	
Fort Wayne, Ind.	Sioux Falls	1	St. Paul
Duluth	Arlington	1	St. Paul
Barberton, Ohio	Pierre	2	St. Paul
Oshkosh, Wis.	Huron	1	St. Paul
St. Paul	Delmont	1	
Tona, N. Y.	Sioux Falls	1	St. Paul
Clinton, Ia.	Madison	2	St. Paul
Rock Island, Ill.	Yankton	1	St. Paul
Minneapolis	Parkston, S. D.	1	
Racine, Wis.	Huron	1	St. Paul
Minneapolis	Hillside, S. D.	1	
Elgin	Mitchell	1	St. Paul
Auburn, Ind.	Huron	1	St. Paul
Sabuque	Mitchell	4	St. Paul
Clinton	Huron	1	St. Paul
Rock Island	Vermillion	1	St. Paul
Rock Island	Brookings	1	St. Paul
Milwaukee	Humbolt, S. D.	1	St. Paul
St. Louis	Madison	1	St. Paul
Kansas City	Madison	1	St. Paul
Minneapolis	Gann Valley, S. D.	1	
Akron, Ohio	Mitchell	1	St. Paul
Mansfield, Ohio	Madison	1	St. Paul
Davenport	Chamberlain	1	St. Paul
Freeport	Madison	1	St. Paul
Freeport	Utica, S. D.	1	St. Paul
Columbus, Ohio	Huron	3	St. Paul
Muskegon, Mich.	Huron	1	St. Paul
St. Cloud	Huron	1	St. Paul
Kalamasoo	Huron	1	St. Paul
Rock Island	Beresford	1	
St. Paul	Vermillion	1	
St. Paul	Beresford	1	
Sioux Falls	Kalamasoo	1	St. Paul
St. Paul	Elk Point	1	
Kennet, Mo.	Sioux Falls	1	
Omaha	Sioux Falls	1	St. Paul
Winona	Yankton	1	St. Paul
Kansas City	Marion	1	
St. Paul	Scotland, S. D.	1	

Origin	Destination	No. of Shipments	Interchange Points
November, 1938 (Cont.)			
[fol. 224]			
Columbus, O.	Yankton	1	St. Paul
Ladysmith	Sioux Falls	1	St. Paul
Akron	Pierre	1	St. Paul
Ludington, Mich.	Huron	1	St. Paul
Davenport	Alpena	1	St. Paul
Dubuque	Flandreau	1	St. Paul
St. Paul	Orient, S. D.	1	
Albert Lea	Sioux Falls	1	St. Paul
Duluth	Yankton	1	St. Paul
Huron	So. St. Paul	1	
Minneapolis	Humbolt, S. D.	1	
Rochester, Minn.	Huron	1	
Davenport	Yankton	1	St. Paul
Sioux Falls	Robinsdale	1	
Huron	Lebanon, Ind.	1	St. Paul
Salem	St. Paul	1	

[fol. 225]

PARTIAL ABSTRACT OF STYER EXHIBITS NOS. 19 AND 20 SHOWING ALL SHIPMENTS TO AND FROM MINNESOTA POINTS EXCLUSIVE OF THE TWIN CITIES

Date	Origin	Destination	Commodity
October, 1938			
11	St. Paul, Minn.	Worthington, Minn.	Batteries
17	Minneapolis, Minn.	Worthington, Minn.	Batteries
22	Minneapolis, Minn.	Worthington, Minn.	Batteries
November, 1938			
1	Minneapolis, Minn.	Worthington, Minn.	Batteries
3	Minneapolis, Minn.	Worthington, Minn.	Paint
4	Minneapolis, Minn.	Worthington, Minn.	Batteries
10	Minneapolis, Minn.	Worthington, Minn.	Batteries
10	Sioux Falls, S. D.	Montevideo, Minn.	Theater Equipment
11	Minneapolis, Minn.	Worthington, Minn.	Batteries
14	Morris, Minn.	Brookings, S. D.	Evergreens
23	Minneapolis, Minn.	Worthington, Minn.	Batteries

[fol. 226] STYER EXHIBIT NO. 21 "SHOWING VOLUME BY WEIGHT OF SHIPMENTS CARRIED DURING REPRESENTATIVE MONTHS IN 1936, 1937 & 1938."

1938

November	1,007,836 pounds
October	1,345,712 pounds
September	1,221,088 pounds
August	1,177,323 pounds
July	1,031,748 pounds
June	1,083,034 pounds

1937

October	889,382 pounds
June	667,193 pounds

1936

October	715,525 pounds
June	826,897 pounds

[fol. 227] **STYER EXHIBIT No. 22: "SHOWING EQUIPMENT
OWNED BY APPLICANT IN OPERATION DURING
VARIOUS PERIODS BETWEEN APRIL 1, 1935
AND DECEMBER 12, 1938"**

**Trucks in Service on June 1, 1935
With Dates of Purchase**

April 1935 — June 1, 1935

March 30, 1935, GMC T-26 Truck 1933-873-12572323
March 30, 1935, Ford V-8 1934 Truck Motor 18-820176
(used)
April 9, 1935, GMC 1935 Tractor 1½-2½ Ton Serial T-18-
B-14182 Motor 122117735 (new)
April 9, 1935, GMC Semi-trailer UT 21-2 TT-218
April 9, 1935, GMC Semi-trailer Serial 112-TT-226 C
April 9, 1935, GMC Tractor T-33-B—Serial 077-Motor
12575268

**Additional Trucks in Service on October 15, 1935
With Dates of Purchase**

June 2, 1935 — October 15, 1935

August 2, 1935, 1931 Chev. 1½ Ton Truck 2134677—Serial
21L12089, 1935 License X30201 Minn.
August 18, 1935, GMC 1935 2 Ton Tractor T 23-B-Motor
12215399, Serial 3121 (used)
August 18, 1935 Kingham 1933 Semi Trailer EF4-3861

**Equipment Put in Service Between October 15, 1935 and
November 1, 1938 and Indication of Vehicle
Replaced, With Dates of Purchase**

October 12, 1935, Mack Jr. 1½ Ton Tractor 30 Mas 1194
Motor 24B-5482, New
February 21, 1936, Edwards Semi Trailer 22 ft. 1935-
3386-A3 (new—to replace GMC)
August 25, 1936, Ford Pick Up 1931-A3634418
October 10, 1936, Trailmobile Semi Trailer (1936) Serial
18150 T22 New, 12000# axle—22 Feet Long
January 6, 1937, GMC 1936 New Tractor T 18B-12392021
—19509 (replaced old Tractor)
February 3, 1937, Mack 2½ Ton Tractor 6EHISD-1015-
New

August 27, 1937, Chevrolet 1935 1½ T—21QD04—7096—T5088987

September 15, 1937, GMC 1937 Tractor—1½-2½ Tons—T-18-A Motor 12398974 Serial 25619 (new)

October 14, 1937, Trailmobile Semi Trailer Serial 18601—T22 (new)

October 22, 1937, Ford 1934 ½ Ton Pick Up 18-845223 (used) (replaced 1931 Ford Pick Up)

June 2, 1938, Chevrolet 1935—1½ Ton—21PD035364—T4134115

August 12, 1938, 1938 Trailmobile Trailer Serial 20317 T42 (new) 24-foot

September 15, 1938, T-18A—1½ Ton GMC Tractor 1938 Motor 12398674—Serial 25619 (new)

September 20, 1938, Trailmobile Trailer Serial 20124 H31 (new) 24-foot

August 4, 1938, 1937 Mack 2½ Ton Tractor 6EHISD1360 (BG4647) (demonstrator)

[fol. 228] EQUIPMENT ON HAND AND IN USE ON
DECEMBER 12, 1938

Mack Tractor 1938 2½ Ton 6EHISD1360 BG 46-47

Mack Tractor 1937 2½ Ton 6EHISD1015

GMC Tractor 1937 1½-2½ Ton T18A12398974 Sr. 25619

GMC Tractor 1938 1½-2½ Ton 12398674 Sr. 25619

Trailmobile Semi Trailer, 1938 T42 Sr. 20317 Axle 8 Ton 24 ft.

Trailmobile Semi Trailer 1938 H31 Sr. 20124 Axle 13,000# 24 ft.

Trailmobile Semi Trailer 1937 T22-Sr. 18601 Axle 6 Ton 22 ft.

Trailmobile Semi Trailer 1936 Sr. 18150 T-22 Axle 12,000# 22 ft.

GMC Tractor 1933 T23B 12215399 Sr. 3121

Kingham Semi Trailer 1933 Sr. EF4-3861 Axle 6 Ton 22 ft.

GMC Truck 1935 1½-2½ Ton Sr. T-18B14182 Motor 122117735

Chevrolet Truck 1935 1½ Ton 21PD035364-T4134115 Van Body

Chevrolet Truck 1934 1½ Ton 21QD04-7096-T5088987 Van Body

Ford Truck 1934 ½ ton 18—845223

Total 4 Trucks, 5 Semi Trailers, 5 Tractors.

[fol. 229] STYER EXHIBIT No. 23: "SHOWING NUMBER OF
DIFFERENT SHIPPERS AND RECEIVERS OF FREIGHT
SERVED BY APPLICANT DURING MONTH
OF OCTOBER, 1938."

In Minneapolis and St. Paul:

170 Shippers
45 Receivers

In points outside of Minneapolis and St. Paul:

64 Shippers
450 Receivers

In Sioux Falls:

11 Shippers
144 Receivers

[fol. 230] STYER EXHIBIT No. 24: "SHOWING CONNECTING
LINES WITH WHICH APPLICANT INTERCHANGED
SHIPMENTS DURING OCTOBER
AND NOVEMBER, 1938."

CONNECTING LINES

Advance Express Company, St. Paul
Akron Motor Cargo, Minneapolis
Babbitt Brothers, St. Paul
Bos Transfer, St. Paul
Britton Motor Express, Minneapolis
Central Wisconsin Motor Express, St. Paul
Elsholtz Transportation, St. Paul
Flambeau Freight Line, Minneapolis
Gateway City Transfer, St. Paul
Glendenning Transfer Service, St. Paul
Hart Motor Express, Minneapolis
H & W Motor Express, Minneapolis
Hennepin Transfer, Minneapolis
Knaus Truck Line, St. Paul
Keeshin Motor Express, Minneapolis
Merchants Motor Freight, St. Paul
Minnesota Wisconsin Truck Line, St. Paul
Murphy Motor Freight Line, St. Paul
Mueller Transportation Company, St. Paul
Raymond Brothers Transfer, St. Paul

Service Transfer Service, Minneapolis
 Steller Transportation Company, Minneapolis
 Twin Cities Des Moines Motor Express, Minneapolis
 Schmacker Transportation Company, St. Paul
 United Shipping, Minneapolis
 Ward Transfer, Minneapolis
 Volck Brothers, St. Paul
 Werner Transportation Company, Minneapolis
 Wheeler Transportation Company, St. Paul
 Witte Transportation Company, St. Paul

[fol. 231] ABSTRACT OF STYER EXHIBIT No. 27

This exhibit is entitled: "Abstract of Trip Sheets for the Month of December, 1938, Showing the Number of Westbound Shipments Moved Direct to Towns Other than Brookings, Huron and Mitchell."

This abstract shows the number of shipments made to the towns listed.

<i>Destination</i>	<i>Shipments</i>
Salem	7
Worthington	5
Madison	25
Sioux Falls	365
Yankton	66
Madison	92
Dell Rapids	4
Arlington	11
De Smet	7
Lake Preston	4
Volga	4
Wentworth	1
Howard	6
Vermillion	12
Jackson, Minn.	1
Emery	1

ABSTRACT OF STYER EXHIBIT No. 28

This exhibit is entitled: "Abstract of Trip Sheets for the Month of January, 1939, Showing the Number of Westbound Shipments Moved Direct to Towns Other than Brookings, Huron and Mitchell."

This abstract shows the number of shipments made to the towns listed.

<i>Destination</i>	<i>Shipments</i>
Sioux Falls	333
Madison	112
Worthington, Minn.	3
Lake Preston	2
De Smet	8
Yankton	61
Vermillion	9
Hartford	1
Dell Rapids	1
Wentworth	1
Arlington	6
Elkton	4
Manchester	1
Bridgewater	1
Howard	1
Viborg	7
Salem	2
Parker	1
Jackson, Minn.	1
Emery	1

[fol. 232]

ABSTRACT OF STYER EXHIBIT No. 29

This exhibit is entitled: "Abstract of Trip Sheets for the Month of December, 1938, Showing Eastbound Movements of Freight."

This abstract shows the number of movements between the listed origins and destinations or interchange points.

<i>Origin</i>	<i>Destination</i>	<i>Number of Shipments</i>	<i>Interchange Points</i>
December, 1938, Eastbound			
Huron	South St. Paul	5	
Huron	Minneapolis	11	
Huron	Leberton, Ind.	1	St. Paul
Huron	Chicago	1	St. Paul
Huron	St. Paul	5	
Mitchell	Minneapolis	4	
Mitchell	Freeport, Ill.	2	St. Paul
Mitchell	Chicago	9	St. Paul
Mitchell	New York	1	St. Paul
Mitchell	South St. Paul	3	
Madison	Minneapolis	12	
Madison	St. Paul	1	
Sioux Falls	St. Paul	14	
Sioux Falls	Robinsdale, Minn.	1	
Sioux Falls	Minneapolis	9	
Sioux Falls	Chicago	1	St. Paul
Sioux Falls	Fargo, N. Dak.	1	St. Paul

Origin	Destination	Number of Ship- ments	Interchange Points
Salem	St. Paul	5	
Salem	Chicago	9	St. Paul
Brookings	Minneapolis	11	
Brookings	Tulsa, Okla.	1	St. Paul
Brookings	Chicago	1	St. Paul
Brookings	St. Paul	2	
Brookings	Springfield, Ill.	1	St. Paul
Volgo	Chicago	4	St. Paul
Yankton	St. Paul	1	

[fol. 233]

ABSTRACT OF STYER EXHIBIT NO. 30

This exhibit is entitled: "Abstract of Trip Sheets for the Month of January, 1939, Showing Eastbound Movements of Freight."

This abstract shows the number of movements between the listed origins and destinations or interchange points.

January, 1939, Eastbound

Mitchell	South St. Paul	1	
Mitchell	Chicago	14	St. Paul
Mitchell	Minneapolis	2	
Mitchell	Faribault	1	
Madison	Minneapolis	8	
Madison	St. Paul	4	
Madison	Chicago	3	St. Paul
Brookings	Minneapolis	15	
Brookings	St. Paul	4	
Brookings	Des Moines	2	
De Smet	Minneapolis	1	
Huron	Minneapolis	6	
Huron	St. Paul	4	
Huron	South St. Paul	3	
Huron	Chicago	2	St. Paul
Yankton	Minneapolis	2	
Arlington	New York	1	St. Paul
Sioux Falls	Minneapolis	8	
Sioux Falls	Chicago	1	St. Paul
Sioux Falls	St. Paul	11	
Salem	St. Paul	1	
Salem	Minneapolis	1	

[fol. 234]

STYER EXHIBIT NO. 39

Showing the Minnesota points listed in various tariffs as local points or stations served by applicant.

Purpose: To show the self evident change in the type and scope of operation of applicant subsequent to June 1, 1935 and October 15, 1935. Also to show that as to much of the traffic claimed to have been transported by applicant he did not have rates on file as required. To show further that applicants tariff did not and does not agree with the application as to points and territory.

Refer to *Brown Motor Freight Lines, Inc., Common Carrier Application*, MC 63495 (2 M C C 667-676). See also Administrative Ruling No. 32 of September 9, 1936.

Regular Service
MF-I.C.C. No. 3
April 1, 1936
Dec. 31, 1936
Note 1

Occasional Service
MF-I.C.C. No. 132
Jan. 4, 1937
July 1, 1938
Note 2

Regular Service
MF-I.C.C. No. 117
Dec. 31, 1936 to
Current issue
Note 3

Albert Lea
Austin
Baker
xx
xxx
Bemidji
Blue Earth
Breckenridge
xx
Brownton
Chaska
xx
Dawson
Detroit Lakes
Dodge Center
Duluth
Excelsior
Fairmont
Faribault
Fergus Falls
xx
xx
xx
Glencoe
Grand Rapids
Hastings
Hill City
Ivanhoe
xx
xx
xx
Lake Benton
xx
xx
xx
xx
Luverne
xx
Mankato
Marshall
Montevideo
xx
Moorhead
New Ulm
xx

xx
Albert Lea
Austin
Baker
xx
xxx
Bemidji
Blue Earth
Breckenridge
Bricelyn
Brownton
xx
xx
Dawson
Detroit Lakes
Dodge Center
Duluth
Excelsior
xx
Faribault
Fergus Falls
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Grand Rapids
Hastings
Hill City
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Montevideo
Montgomery
Moorhead
xx
xx

Adrian
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xx
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Balston
Belle Plaine
xx
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xx
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Chaska
Cologne
xx
xx
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xx
xx
Fairmont
xx
xx
Franklin
Gaylord
Gibbon
Glencoe
xx
xx
xx
Ivanhoe
Jackson
Jordan
Lake Benton
Lake Crystal
Lamberton
Le Seuer
Luverne
Madelia
Mankato
Marshall
xx
xx
xx
New Ulm
Norwood

Regular Service
MF-I.C.C. No. 3

April 1, 1936

Dec. 31, 1936

Note 1

xx

xx

Owatonna

Perham

Pipestone

xx

[fol. 235]

Redwood Falls

xx

St. Cloud

xx

xx

xx

xx

Stillwater

Tracy

Two Harbors

Waseca

xx

xx

White Bear Lake

Wilmar

Winona

xx

xx

xx

40 points

Occasional Service
MF-I.C.C. No. 132

Jan. 4, 1937

July 1, 1938

Note 2

Olivia

Ortonville

Owatonna

Perham

Pipestone

Plainview

xx

Rochester

St. Cloud

xx

xx

xx

xx

Stillwater

xx

Two Harbors

Waseca

Watertown

Wells

White Bear Lake

Wilmar

Winona

Winsted

xx

xx

38 points

Regular Service
MF-I.C.C. No. 117

Dec. 31, 1936 to

Current issue

Note 3

xx

xx

xx

xx

xx

Redwood Falls

xx

xx

St. Peter

Shakopee

Sleepy Eye

Springfield

xx

Tracy (Note)

xx

xx

xx

xx

xx

xx

xx

xx

Winthrop

Worthington (Note)

31 points

29 points dropped on Dec. 31, 1936

30 points added as of Dec. 31, 1936

Note: Tracy was dropped from MF-I.C.C. No. 117 by Supplement 40, effective Dec. 15, 1937. Worthington was added by MF-I.C.C. No. 117, Dec. 17, 1936, but was dropped again by Supplement No. 40, effective December 15, 1937.

Note 1.—Authority Agent Lou Hoskings MF-I.C.C. No. 3

Note 2.—Authority Agent Lou Hoskings MF-I.C.C. No. 132

Note 3.—Authority Agent Lou Hoskings MF-I.C.C. No. 117

**[fol. 236] EVIDENCE IN PROCEEDINGS BEFORE JOINT BOARD
IN DOCKET No. MC-47644, SUB. No. 1, APPLICATION FOR
CERTIFICATION OF PUBLIC CONVENIENCE AND NECESSITY**

**Ruling of Joint Board Accepting Styer's
Amendment of His Application.**

Mr. Ossanna, Chairman of the Joint Board: "The Board rules that the amendment will be accepted, subject to the provision that if we find later that it has unduly broadened the issue, we will throw it out." (Tr. 206)

Applicant's Evidence

Cornelius W. Styer, applicant, in business as a common carrier by motor vehicle under the name of Northern Transportation Company. I have been operating over the routes for which I am making application since prior to October 15, 1935, and over some of those routes since prior to June 1, 1935. By this application I am seeking authority to continue those operations. I am not proposing by this application to institute any new operations that I am not performing today. I am giving a daily direct common carrier service of commodities generally over regular routes between Minnesota and South Dakota. I give a next morning delivery service from the Twin Cities to points on my regular routes in South Dakota. I provide a store-door pick up and delivery service. We handle less than truck load freight. (Tr. 206-208).

The regular route service that we are performing today is largely on a return movement from South Dakota. L. T. L. freight that we handle moving in a westbound direction greatly exceeds the same type of freight moving in an easterly direction. Consequently, in order to keep the trucks loaded in both directions as nearly as possible, we use every effort we can to take additional merchandise of a nature that will keep these trucks loaded. For instance, on produce, which is one of the chief movements from South Dakota to Minnesota, we accept produce not only from towns on our regular routes to towns on and off our regular routes in Minnesota, but in towns off of our [fol. 237] regular routes in South Dakota to towns on or off, usually on our regular routes in Minnesota. In addition to that, there is a large movement of such items as construction supplies, and road machinery or road equip-

ment, building supplies and building materials that have a movement in regular territory adjacent to our regular routes that forms a considerable part of our traffic. In connection with the produce moving in an eastbound direction, a good share of that is brought to the Twin Cities for reshipment to the eastern markets by connecting lines at the Twin Cities. We have household goods moving both in LTL quantities and straight loads on our regular routes, and from points on our regular routes to points in irregular territory.

Seeds from South Dakota, especially clover, alfalfa, and broom grass seeds amount to considerable of our return freight, especially in certain times of the year. And these go to various points on and off our routes in Minnesota, and some of them even to the Twin Cities for transfer to Wisconsin and Illinois. (Tr. 209-210).

These irregular route movements happen in one manner or another constantly. I mean by constantly, there is hardly a week ever goes by but what we will have something moving in some manner. For instance, we will go off the route to pick up an LTL shipment in South Dakota which we will deliver irregular in Minnesota on the return haul. In addition to that, there are occasional times when shippers and jobbers in South Dakota will get rush shipments of canned goods from various canning factories in Minnesota, sometimes to fill out for a certain order, or some rush shipment that they need that they might make up a carload for, but it is something that they have to have, and they want it in direct service and on a time schedule. These shipments will vary from a few hundred pounds to a truck load and sometime there will be even several truck loads at one time. Most of these eastbound operations are seasonal in nature with the possible exception of household goods which is a regular movement. (Tr. 210-211).

[fol. 238] I have been performing both this regular route operation and irregular route operation I have described since prior to October 15, 1935. (Tr. 216). Aside from Sioux Falls, Brookings, and Huron, in South Dakota, no other points located on my regular routes in South Dakota have direct daily motor service from Minneapolis except that I am giving. Our service is direct and daily. Delivery to any of the points on our regular routes, other than to the three stations mentioned, if not made by us,

would have to be made by a motor carrier who had received the shipment by transfer from some other motor carrier originating the shipment. (Tr. 220-221).

Our main office and warehouse is in St. Paul. We have both heated and refrigerated storage there. We have pick up service covering the entire Twin Cities. Besides these facilities in St. Paul we have agents in South Dakota at Brookings, Arlington, Lake Preston, DeSmet, Dell Rapids, Huron, Mitchell, Madison, Sioux Falls, and Yankton. Some of these points have warehouse and dock facilities much the same as we have at St. Paul. (Tr. 223-224).

[fol. 239] **GEORGE F. WINGERT.** Resides at Minneapolis, has produce business in Salem, South Dakota. He wants services of Styer for the transportation of poultry and eggs from Salem, South Dakota, to Minneapolis and St. Paul, and for occasional shipments for supplies such as lumber from the Twin Cities to Salem, South Dakota. Witness has been using Styer's services as described for the past year and a half (Tr. 9-32).

H. W. ROBERTS. Resides at Sioux Falls, South Dakota; is traffic manager of the Sioux Falls plant of the John Morrell Packing Company. This company has been using Styer's services for the transportation of produce and packing house products from its plant in Sioux Falls, South Dakota, to its branch houses in Minneapolis and St. Paul three truck loads a week for the past four months, finds its service satisfactory and wants it continued. Such branch houses serve the northern half of Minnesota (Tr. 32-41).

D. F. DONOVAN. Resides at St. Paul, Minnesota, and is regional traffic manager of Montgomery Ward and Company. This company has used Styer's services for transportation from the Twin Cities to the company's retail stores in South Dakota, particularly, Yankton, Mitchell, Huron, and Sioux Falls. This service is wanted because it furnishes an over-night service from the Twin Cities to such points (Tr. 47-54).

THOMAS RUANE. Resides at Minneapolis and is traffic manager of Grant Battery Company of Minneapolis. This company has been using Styer's service for transportation from the Twin Cities to the company's wholesale branch at

Sioux Falls, South Dakota, for some time, finds the service satisfactory, and wants it continued (Tr. 54-64).

[fol. 240] F. J. METZGER, Assistant Traffic Manager of Swift and Company at South St. Paul. Swift has used Styer's service from the Twin Cities to South Dakota points, principally Huron, occasionally Sioux Falls, for the past two years. Eastbound Styer's service is used on dairy products from Huron principally to the Twin Cities and South St. Paul. Occasionally they have shipments of supplies between Huron, South Dakota, and Montevideo and Marshall, Minnesota. The service has been satisfactory and they wish to have it continued (Tr. 64-69).

R. C. MEYER, Traffic Manager, Armour and Company, South St. Paul, Minnesota. Armour has used Styer's service from South St. Paul to South Dakota points for several years, principally the movement of supplies from the Twin Cities to Huron, and dairy products from Mitchell to South St. Paul and the Twin Cities. Service is satisfactory and its continuance is desired (Tr. 69-81).

HENRY A. ARCHAMBO, Service Representative of Minneapolis Traffic Association, which represents all of the business interests of the city. The Northern Transportation Company (Styer) has been transporting freight from Minneapolis for first morning arrival at stations in the State of South Dakota, for several years and this service has been satisfactory to Minneapolis shippers. The Minneapolis business interests desire a type of transportation which will permit the sale and shipment from Minneapolis of all freight demanded by the consumers in South Dakota. Witness presented two exhibits to show desirability of Styer's service which compare speed of Styer's service between Minneapolis and South Dakota points with that of other carriers, showing Styer's service faster. Only points shown on the exhibit are Minneapolis and various points in South Dakota (Tr. 82-119).

A. W. QUIGGLE, Manager of the Cremette Company, Minneapolis, manufacturers of macaroni products; member of Minneapolis Traffic Association. Ships freight over Styer's truck line from Minneapolis to South Dakota points. They

need over-night service from Minneapolis to South Dakota points (Tr. 119-126).

[fol. 241] B. M. WEISBERG, with Fairfax Parsons Packing Company, Minneapolis, handling produce and meats. Have used Styer's service in the transportation of poultry and eggs from Salem and Mitchell, South Dakota, to Minneapolis. Need such service to bring in eggs and other perishable products over night from South Dakota. Wants service continued (Tr. 126-129).

CHARLES A. LIGGETT, Assistant Traffic Director, St. Paul Association of Commerce, which represents the business interests of the City of St. Paul. The position of the St. Paul Association of Commerce is the same as that of the Minneapolis Traffic Association with reference to the need for this truck transportation from the Twin Cities to South Dakota points. The Twin Cities wholesale houses are in competition with South Dakota wholesale houses for South Dakota business, and speedier transportation from the Twin Cities to South Dakota points improves the competitive position of the Twin Cities wholesale houses for obtaining business in South Dakota (Tr. 129-141).

R. F. WITGRAFF, Regional Representative of Akron Motor Cargo Company, Akron, Ohio, a motor carrier operating from Akron, Ohio, to Minneapolis and St. Paul. Wants a certificate granted Styer so that his company can interchange with Styer at Twin Cities on freight destined to South Dakota points. Has interchanged with Styer in that way for about four years (Tr. 141-146).

C. F. PEARSON, manufacturing confectioner at Minneapolis. Has used Styer's service about the past four years for transportation of his products from Minneapolis to South Dakota points. This service has been satisfactory and witness wants it continued (Tr. 146-151).

K. G. HEIMBACH, Traffic Manager Glendenning Transfer Service, St. Paul, Minnesota. Glendenning operates from Chicago to the Twin Cities and for about four years has been interchanging freight bound for South Dakota points with Styer at the Twin Cities. Glendenning wants Styer's application granted so that they can have an interchange

service at the Twin Cities for shipments to and from South Dakota points (Tr. 152-160).

[fol. 242] FRANK L. O'NEILL, assistant to the traffic manager of the Minnesota Mining and Manufacturing Company, St. Paul, Minnesota, manufacturer of abrasives and tapes. Has used Styer's motor carrier service from St. Paul to certain South Dakota points about a year, found it satisfactory, and wants it continued. They have been expanding their business in South Dakota, putting on additional salesmen out there, and their business in South Dakota is increasing (Tr. 173-181).

EXHIBITS RECEIVED

The exhibits received in evidence in the "grandfather" application proceeding were received in evidence in the public convenience and necessity proceeding (Tr. 237-254).

[fol. 243] PLAINTIFFS' EXHIBIT 2

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. MC-47644

Sub. No. 1. Form BMC-8

In the Matter of the Application of C. W. STYER, Doing Business as Northern Transportation Company

MOTION FOR AMENDMENT OF APPLICATION

Comes now the applicant above named, and respectfully presents this motion for leave to amend his application, filed on Form BMC-8 herein, in the following respects:

I

By withdrawing from the scope of said application all operations in the following territory or specifically named points:

1. In South Dakota, all towns and territory lying on or north of U. S. Highway 212 from the Minnesota-South Dakota Line to the junction of said highway with U. S. Highway 281; all towns and territory lying on or west of

U. S. Highway 281, from its junction with U. S. 212 to its junction with U. S. 14, including Wolsey; all towns and territory lying on and north of U. S. 14, from its junction with U. S. 281 to its junction with South Dakota State Highway 47; all territory lying west of South Dakota State Highway 47, from its junction with U. S. Highway 14 to its junction with U. S. Highway 16; all territory lying south of U. S. Highway 16, from its junction with South Dakota State Highway 47 (at Chamberlain) to its junction with U. S. Highway 281 (near Kimball); all territory west [fol. 244] of U. S. Highway 281 from its junction with U. S. 16 (near Kimball) to the Nebraska-South Dakota State Line.

2. The specific towns of Canton, Beresford, Stevens Point, Alcester, Jefferson, Chamberlain, Pukwana, Kimball, White Lake and Plankinton, in South Dakota.

3. All service in interstate commerce between points in Minnesota.

4. All territory in Minnesota lying east and northeast of U. S. Highway 52, from the Iowa-Minnesota Line to its junction with Minnesota State Highway 28 at Sauk Centre; and all territory north of Minnesota State Highway 28, from its junction with U. S. Highway 52 at Sauk Centre to the South Dakota-Minnesota State Line.

II

By adding to said application all intermediate points in South Dakota, not specifically named in said application, located on the regular routes described in said application.

III

The applicant respectfully submits that the proposed amendment by which additional operating rights are asked will not unduly broaden the issues in this case or be prejudicial to any protestant herein, and should be allowed, for the following reasons, among others:

1. The routes described in said application, upon which the right to serve additional intermediate points is asked by the proposed amendment numbered II—1, above, are the same routes described and contained in this applicant's application filed on Form BMC-1, and set for hearing under

the same docket and at the same time and place as the said BMC-8 application. In said BMC-1 application, all intermediate points in South Dakota are claimed. The applicant, since the inception of his operations in April of 1935, has at all times operated through said intermediate points, offered service to and from said intermediate points and, as business offered, performed service to and from said intermediate points, and is so operating today. Applicant feels, and proposes to prove, that the public convenience and [fol. 243] necessity require the continuation of said service to said intermediate points by this applicant. By inadvertence, the BMC-8 application did not name all of said intermediate points. All of such intermediate points, however, are within the territory specifically asked for in the BMC-8 application, as originally filed and as proposed to be amended by this motion. To describe them as intermediate, rather than irregular, points is the only difference occasioned by the proposed amendment II-1, above. The purpose of the proposed amendment is simply to conform the application to the proof that will be offered. We may point out that the Commission has power to treat, and in many cases has in fact treated, the BMC-1 application as a BMC-8, for purposes of protecting "interim" rights established by the proof. The proposed amendment of this applicant's BMC-8 application will accomplish the same effect, since his BMC-1 application covers all intermediate points on the routes in question. Were the amendment denied, we would ask the Commission in this case, as it has in others, to view the BMC-1 application as a BMC-8 application, to protect interim rights established by the proof.

Respectfully submitted, Cornelius William Styer,
dba Northern Transportation Company, St. Paul,
Minnesota, Applicant.

Perry R. Moore, Clyde W. Fiddes, Stinchfield,
Mackall, Crounse, McNally & Moore, 1100 First National-Soo Line Building, Minneapolis, Minnesota,
Attorneys for Applicant.

(Remainder of exhibit, consisting of Styer's original application is omitted.)

[fol. 246] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO STATEMENT OF THE EVIDENCE ON APPEAL

It is stipulated by all of the parties that the foregoing is a true and complete statement of all of the evidence in this cause which is necessary for consideration by the Supreme Court of the questions in issue; and that this statement may be filed in the office of the Clerk of the District Court and may be included by the clerk in the transcript of record on appeal to the Supreme Court.

The purpose of this stipulation is to settle the record in accordance with paragraph 2 of Rule 10 of the Rules of the Supreme Court; and the signing of this stipulation does not waive the rights of any party under any rule or statute relating to appeals and does not affect the stipulations heretofore made between the parties.

[fol. 247] Date of Signing

Oct. 27, 1943.

Amos M. Mathews, Attorneys for Plaintiffs-Appellants.

Oct. 29, 1943.

United States of America, Robert L. Pierce, Its Attorney.

10-29-1943.

Interstate Commerce Commission, Nelson Thomas, Its Attorney.

Oct. 28, 1943.

Cornelius W. Styer, doing business as Northern Transportation Company, Perry R. Moore, His Attorney.

Nov. 1st, 1943.

Glendenning Motorways, Inc., Fred W. Putnam, Its Attorney.

[fol. 248] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR ALLOWANCE OF APPEAL TO SUPREME COURT OF
THE UNITED STATES—Filed Aug. 9, 1943

To the Judges of the United States District Court for the
District of Minnesota:

The above named plaintiffs, being all of the plaintiffs in
this cause, respectfully state:

Believing the final decree of the Court entered herein
on the 12th day of June, 1943, and the opinion, findings,
[fol. 249] and conclusions of the Court upon which said de-
cree is based, to be erroneous, the plaintiffs pray for the
allowance of an appeal from said final decree to the Su-
preme Court of the United States.

The errors upon which plaintiffs claim to be entitled to
an appeal are more fully set out in the Assignment of Er-
rors and Prayer for Reversal filed in the office of the Clerk
of this Court and presented herewith.

Plaintiffs have also filed in the Clerk's office, and present
herewith, a statement as to the jurisdiction of the Supreme
Court of the United States as provided by Rule 12 of the
Rules of the Supreme Court.

Warren Newcome, Amos M. Mathews, Attorneys for
Plaintiffs-Appellants.

[File Endorsement Omitted]

[fol. 250] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL
Filed Aug. 9, 1943

The District Court erred in its final decree dismissing
plaintiffs' complaint, and in its opinion, findings of fact,
and conclusions of law upon which its decree is based, in
the following respects:

1

The order of the Interstate Commerce Commission au-
thorized defendant-appellee Styer to continue alleged

"grandfather" operations under Section 206 (a) of the Interstate Commerce Act over regular routes between St. Paul, Minnesota, and points in South Dakota, and to serve all Minnesota points on such routes east and westbound. The order was erroneous and should have been annulled by the District Court as to all points in Minnesota except St. Paul and Minneapolis, for the following reasons.

[fol. 251] (a) A stipulation was made during the hearing before the Joint Board, between Styer and the plaintiffs-appellants, that Styer did not claim and was not seeking the right "to transport goods moving in interstate commerce from any Minnesota point to any Minnesota point" upon the "grandfather" routes.

(b) There is no evidence that during the "grandfather" period Styer picked up or delivered any freight at any of the Minnesota points except St. Paul and Minneapolis, or held out to serve such points.

(c) The evidence shows without conflict that during the "grandfather" period Styer's eastbound operation was an irregular route operation to scattered points in Minnesota, that he did not conduct an eastbound regular route operation, and that he did not serve any of the points for which authority was granted by the Commission's order except St. Paul and Minneapolis.

(d) Styer made the further statement in said stipulation that "he does seek to transport from points in South Dakota on these routes to all points in Minnesota irregularly," thereby claiming irregular route "grandfather" rights eastbound but not regular route rights.

2

The Commission's order authorized Styer to begin new operations over regular routes between St. Paul, Minnesota, and points in South Dakota, serving all Minnesota points on such routes, both east and westbound, under Section 207 (a) which requires a showing that such operations are required by present or future public convenience and necessity. The order was erroneous and should have been annulled by the District Court as to all points in

Minnesota except St. Paul and Minneapolis, for the following reasons:

(a) Prior to the hearing on his application before the Joint Board Styer filed an amendment to his application [fol. 252] withdrawing from such application his request for authority as to "All service in interstate commerce between points in Minnesota."

(b) There is a complete absence of evidence that present or future public convenience and necessity requires such service to said Minnesota points.

Wherefore, plaintiffs-appellants pray that the decree of the District Court be reversed and that a decree be entered as indicated hereinabove.

Warren Newcome, Amos M. Mathews, Attorneys for plaintiffs-appellants.

[File endorsement omitted.]

[fols. 253-255] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL TO SUPREME COURT OF THE
UNITED STATES—Filed August 9, 1943

The plaintiffs having presented their petition for appeal to the Supreme Court of the United States from the final decree of this Court, said petition being accompanied by an Assignment of Errors and a Statement as to Jurisdiction of the Supreme Court,

It is now ordered, that plaintiffs are allowed an appeal to the Supreme Court of the United States from the final decree of this court, and shall file security for costs in the penal sum of \$250.00.

Done and ordered this 9th day of August, 1943.

Gunnar H. Nordbye, United States District Judge,
District of Minnesota.

[File endorsement omitted.]

[fol. 256] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

**NOTICE TO THE ATTORNEY GENERALS OF MINNESOTA
AND SOUTH DAKOTA—Filed August 19, 1943**

**To: The Attorney Generals of the States of Minnesota and
South Dakota:**

You are hereby notified, pursuant to Section 47a, Title 28, U. S. C. A., that the plaintiffs in the above entitled action have appealed to the Supreme Court of the United States from the final decree of the District Court dismissing plaintiffs' complaint. There are attached to this notice and served upon you herewith copies of the notice to appellees required by Rule 12 of the Rules of the Supreme Court of the United States, plaintiffs' petition for appeal, order allowing appeal, assignment of errors, and statement as to jurisdiction.

Dated this 9th day of August, 1943.

Warren Newcome, Amos M. Mathews, Attorneys for
plaintiffs-appellants.

[fol. 257] Received copies of the foregoing notice and of the papers therein described on the dates set opposite our respective signatures.

Date: August 16, 1943,

J. A. A. Burnquist, Attorney General, George T. Simpson, Assistant Attorney General of the State of Minnesota.

Date: August 13, 1943,

George T. Mickelson, Attorney General of the State of South Dakota.

[File endorsement omitted.]

[fols. 258-259] Citation in usual form showing service on Robert L. Pierce, et al. omitted in printing.

[fols. 260-261] Cost Bond on Appeal for \$250.00 approved and filed August 9, 1943 omitted in printing.

[fol. 262] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER RE USE OF ORIGINAL PAPERS—Filed October 7, 1943

Upon receiving the stipulation regarding the transmittal of original record in the above entitled case signed by all of the counsel for all of the parties in said proceeding, and being advised in the premises, and the undersigned being the presiding Judge in the Court from which the appeal was taken,

It Is Hereby Ordered That it is proper that the original papers as set forth in said stipulation be inspected in the Supreme Court of the United States and that the original records, including all exhibits before the Trial Court, shall be certified to the Supreme Court of the United States and that the Clerk of the said Trial Court shall cause to be transported said original records to the Clerk of the Supreme Court of the United States, and, upon completion of said proceedings in the Supreme Court of the United States, the said Clerk of the Supreme Court of the United States will return said papers to the Clerk of the United States District Court, District of Minnesota, Fourth Division.

Dated this 7 day of October, 1943.

By the Court:

John B. Sanborn.

[File endorsement omitted.]

[fol. 263] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPUE FOR TRANSCRIPT OF RECORD—Filed August 19, 1943

To: The Clerk of the District Court of the United States for the District of Minnesota, Fourth Division:

For the purpose of the record on appeal in the above entitled cause, please prepare, certify and transmit to the Clerk of the Supreme Court of the United States a tran-

script of the following from the files and records of your Court in said cause:

1. Plaintiffs' complaint.
2. Answer of defendant, United States of America.
3. Answer of defendant, Interstate Commerce Commission.
4. Answer of defendant, Cornelius W. Styer, etc.
5. Answer of intervening defendant, Glendenning Motorways, Inc.
- [fol. 264] 6. Decision, Findings of Fact and Conclusions of Law, and Judgment and Decree of the District Court, all dated June 12, 1943.
7. Statement of the evidence filed by plaintiffs, and proof of service thereof upon defendants and intervening defendant.
8. Petition for appeal to Supreme Court.
9. Assignment of errors and prayer for reversal.
10. Statement as to jurisdiction of the Supreme Court.
11. Order allowing appeal to Supreme Court of the United States.
12. Notice and proof of service upon defendants of copies of the petition for appeal, assignment of errors, statement as to jurisdiction, and order allowing appeal.
13. Notice of appeal to attorney generals of Minnesota and South Dakota, and proof of service thereof.
14. Citation with acceptance of service.
15. Cost bond on appeal.
16. This praecipe, and proof of service thereof.

Dated this 19th day of August, 1943.

Warren Newcome, Amos M. Mathews, Attorneys for
Plaintiffs-appellants.

[File endorsement omitted.]

[fol. 265] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF FILING, AND SERVICE OF PRAECIPE FOR TRANSCRIPT
OF RECORD—Filed August 31, 1943

To: United States of America; Interstate Commerce Commission; Cornelius W. Styer, doing business as Northern Transportation Company, defendants; and Glendenning Motorways, Inc., Intervening defendant:

You are hereby notified that, pursuant to paragraph 2 of Rule 10 of the Rules of the Supreme Court of the United States, the plaintiffs-appellants have filed in the office of the Clerk of the District Court in the above entitled cause a praecipe for transcript of record, copy of which is herewith served upon you.

Dated this 19th day of August, 1943.

Warren Newcome, Amos M. Mathews, Attorneys for
Plaintiffs-appellant.

[fol. 266] Service of the foregoing notice and of the praecipe therein described, and receipt of copies of said notice and praecipe, acknowledged on the dates set opposite our respective names.

Date:

Aug. 21, 1943.

United States of America, by Robert L. Pierce, Its
Attorney.

Aug. 21, 1943.

Interstate Commerce Commission, by Nelson Thomas,
Its Attorney.

August 19, 1943.

Cornelius W. Styer, doing business as Northern
Transportation Company, by Perry R. Moore, His
Attorney.

August 19, 1943.

Glendenning Motorways, Inc., by Fred W. Putnam,
Its Attorney.

[File endorsement omitted.]

[fol. 267] Clerk's Certificate to foregoing transcript
omitted in printing.

[fol. 268] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ENLARGING TIME TO DOCKET CAUSE AND FILE TRANSCRIPT IN SUPREME COURT OF THE UNITED STATES September 13, 1943

Upon application of plaintiffs-appellants duly made, and good cause being shown,

It Is Ordered, that the time within which this cause may be docketed on appeal and the transcript of record thereof filed in the office of the Clerk of the Supreme Court of the United States, is enlarged to the 15th day of October, 1943.

Dated this 13th day of September, 1943.

Gunnar H. Nordbye, United States District Judge.

[fol. 269] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ENLARGING TIME TO DOCKET CAUSE AND FILE TRANSCRIPT IN SUPREME COURT OF THE UNITED STATES.

Oct. 11, 1943

Upon application of plaintiffs-appellants duly made, and good cause being shown,

It Is Ordered, that the time within which this cause may be docketed on appeal and the transcript of record thereof filed in the office of the Clerk of the Supreme Court of the United States, is enlarged to the 10th day of November, 1943.

Dated this 11th day of October, 1943.

Gunnar H. Nordbye, United States District Judge.

[fol. 269a] IN THE SUPREME COURT OF THE UNITED STATES

No. 482, October Term, 1943

[Title omitted]

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO
RELY, AND DESIGNATION OF THE PARTS OF THE RECORD
TO BE PRINTED.—Filed November 13, 1943

1

The points on which appellants intend to rely are those stated in appellants' assignment of errors.

2

All of the record (including this statement and designation) should be printed except the following parts:

(a) Omit Exhibits A and B attached to plaintiffs' (appellants') complaint.

(b) Omit all of the exhibits attached to answer of defendant-appellee, Cornelius W. Styer, etc.

(c) Omit all of the exhibits attached to answer of defendant-appellee, Glendenning Motorways, Inc.

[fol. 270] (d) In the statement of the evidence omit the following:

(1) Omit the Report and Order of Division 4 of the Interstate Commerce Commission, dated March 13, 1943, approving the sale and transfer of property and rights from Styer to Glendenning Motorways, Inc., being pages originally numbered 13 to 19, both inclusive, of the statement of the evidence.

(2) Omit Styer Exhibit No. 7 before the Interstate Commerce Commission entitled, "Abstract of trip sheets showing trips made and towns served by applicant between April 1, 1935, and November 12, 1938, inclusive," being pages originally numbered 65 to 96, both inclusive, in the statement of the evidence. But *do not omit* the "Partial abstract of Styer Exhibit No. 7 showing references

only to Minnesota points," being pages originally numbered 97 and 98 of said statement.

- (3) Omit Styer Exhibit No. 17 before the Interstate Commerce Commission, being pages originally numbered 102 to 104, both inclusive, of said statement.

(e) Omit the citation.

(f) Omit the cost bond on appeal.

Dated this 10th day of November, 1943.

Warren Newcome, Amos M. Mathews, Attorneys for appellants.

[fol. 271] I hereby certify that I served the foregoing document upon all counsel for appellees in this cause by mailing copies thereof to such counsel, named below, at the addresses shown, on the 11th day of November, 1943.

Amos M. Mathews, 204 South Canal Street, Chicago 6, Illinois.

Mr. Robert L. Pierce, Special Assistant to the Attorney General, Department of Justice, Washington, D. C. Mr. Nelson Thomas, Attorney Interstate Commerce Commission, Washington D. C. Mr. Perry R. Moore, 1100 First National Soo Line Building, Minneapolis, Minnesota. Mr. Fred W. Putnam, 826 First National Soo Line Building, Minneapolis, Minnesota.

[fol. 272] IN THE SUPREME COURT OF THE UNITED STATES

No. 482, October Term, 1943

[Title omitted]

DESIGNATION BY RESPONDENT, CORNELIUS W. STYER, DOING BUSINESS AS NORTHERN TRANSPORTATION COMPANY, OF ADDITIONAL MATERIAL PARTS OF RECORD FOR PRINTING—Filed November 18, 1943

To the Clerk of the Supreme Court of the United States:

Comes now the respondent, Cornelius W. Styer, doing business as Northern Transportation Company, and desig-

notes the following material parts of the record to be printed herein, in addition to those parts heretofore designated by appellant:

1

Include the report and order of Division 4 of the Interstate Commerce Commission, dated March 13, 1943, approving the sale and transfer of property and rights from Styer to Glendenning Motorways, Inc., being pages originally numbered 13 to 19, both inclusive, of the statement of the evidence.

[fol. 273]

2

Include Styer Exhibit No. 7 before the Interstate Commerce Commission entitled "Abstract of trip sheets showing trips made and towns served by applicant between April 1, 1935, and November 12, 1938, inclusive," being pages originally numbered 65 to 96, both inclusive, in the statement of the evidence.

3

Include Styer Exhibit No. 17 before the Interstate Commerce Commission, being pages originally numbered 102 to 104, both inclusive, of said statement of evidence.

Dated this 16th day of November, 1943.

Perry R. Moore, Attorney for Appellee Cornelius W. Styer, doing business as Northern Transportation Company.

1100 First National Soo Line Bldg., Minneapolis, 2, Minnesota.

[fol. 274] I hereby certify that I served the foregoing document upon all counsel for Appellees and Appellants in this cause by mailing copies thereof to such counsel, named below, at the addresses shown, on the 16th day of November 1943.

Perry R. Moore, 1100 First National Soo Line Building, Minneapolis 2, Minnesota.

Mr. Robert L. Pierce, Special Assistant to the Attorney General Department of Justice Washington, D. C.

Mr. Nelson Thomas, Attorney Interstate Commerce Commission Washington, D. C.

Mr. Amos M. Mathews, 204 South Canal Street Chicago 6, Illinois.

Mr. Fred W. Putnam, 826 First National Soo Line Building Minneapolis 2, Minnesota.

[fol. 275] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1943

No. 482

[Title omitted]

DESIGNATION OF ADDITIONAL PARTS OF THE RECORD TO BE
PRINTED—Filed November 19, 1943

Appellees, United States of America and Interstate Commerce Commission, pursuant to Rule 13, paragraph 9 of the Supreme Court Rules, designate the following portion of the record to be printed in the above-entitled case in addition to those portions heretofore designated by appellants:

1. Styer exhibit No. 17 before the Interstate Commerce Commission, being pages originally numbered 102 to 104 in the statement of evidence.

Charles Fahy, Solicitor General; Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission.

[fol. 276] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

DESIGNATION OF ADDITIONAL PARTS OF THE RECORD—Filed
November 17, 1943

The undersigned Intervening Defendant deems material and should be included in the printed record:

I

Exhibit A, A-1, A-2 and Exhibit B attached to the answer of Defendant Appellee Glendenning Motorways, Inc.

Dated this 15th day of November, 1943:

Fred W. Putnam, Attorney for Appellee Glendenning Motorways, Inc., 826 First National Soo Line Bldg., Minneapolis 2, Minnesota.

[fol. 277] I hereby certify that I served the foregoing document upon all counsel for Appellees and Appellants in this cause by mailing copies thereof to such counsel, named below, at the addresses shown, on the 15th day of November, 1943.

Fred W. Putnam, 826 First National Soo Line Building, Minneapolis 2, Minnesota.

Mr. Amos M. Mathews, 204 South Canal Street, Chicago, Ill.

Mr. Robert L. Pierce, Special Assistant to the Attorney General, Department of Justice, Washington, D. C.

Mr. Nelson Thomas, Attorney, Interstate Commerce Commission, Washington, D. C.

Mr. Perry R. Moore, 1100 First National Soo Line Bldg., Minneapolis, Minnesota.

Mr. Warren Newcome, 275 East 4th Street, Saint Paul, Minnesota.

[fol. 278] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1943

No. 482

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—December 13, 1943

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket:

Endorsed on Cover: File No. 47,975, Minnesota, D. C. U. S. Term No. 482. Chicago, Saint Paul, Minneapolis & Omaha Railway Company, et al., Appellants, vs. The United States of America, Interstate Commerce Commission, et al. Filed November 9, 1943. Term No. 482, O. T. 1943.

FILE COPY

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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 482

**CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA
RAILWAY COMPANY, ET AL.,**

Appellants,

vs.

**THE UNITED STATES OF AMERICA, INTERSTATE
COMMERCE COMMISSION, ET AL.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF MINNESOTA.**

STATEMENT AS TO JURISDICTION.

✓
**WARREN NEWCOMB,
AMOS M. MATHEWS,
Counsel for Appellants.**

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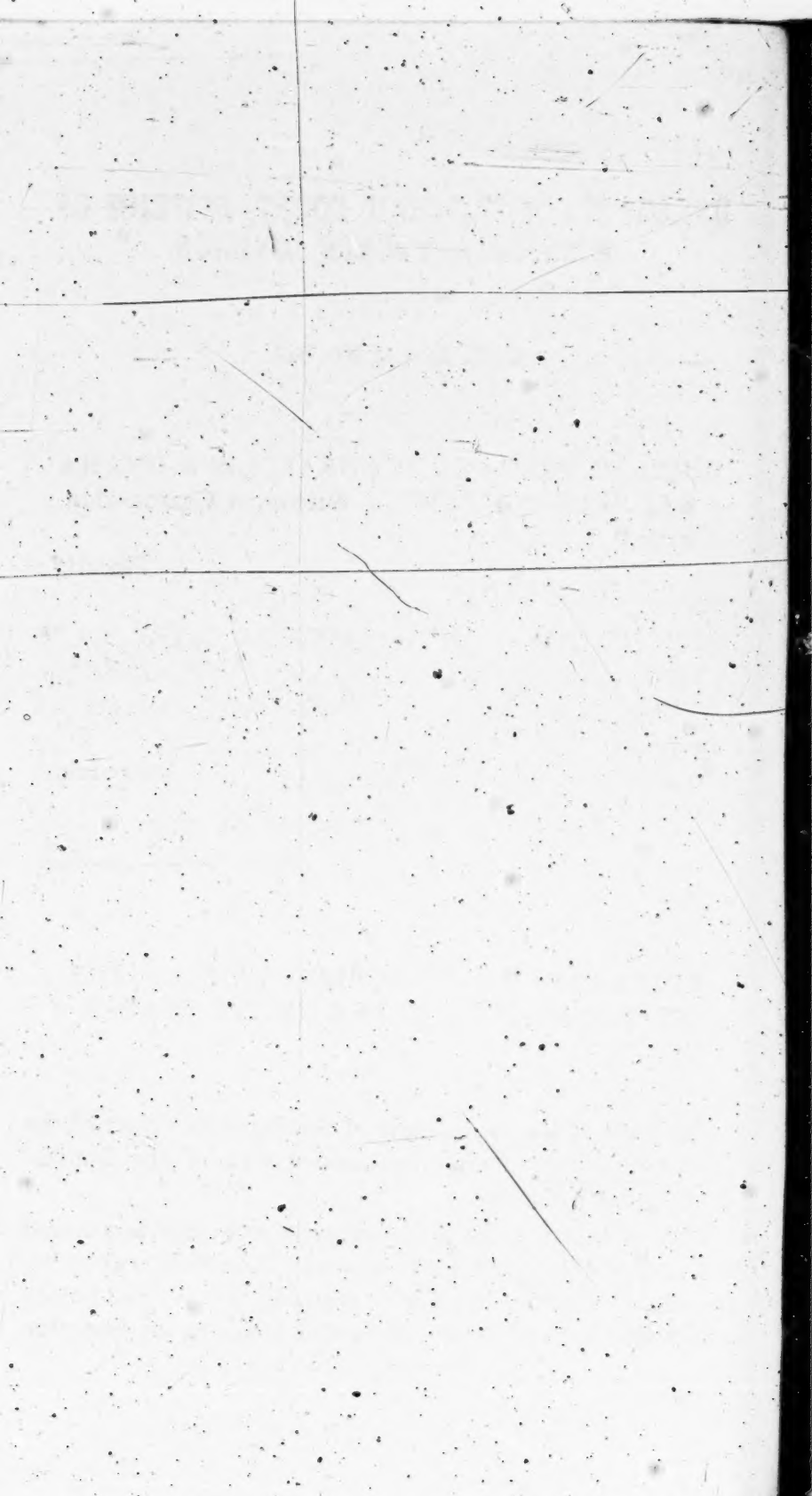
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TABLE OF CASES CITED.

<i>Alton Railroad Company v. U. S.</i> , 315 U. S. 15	2
<i>Howard Hall Company v. U. S.</i> 315 U. S. 495	2
<i>United States v. Maher</i> , 307 U. S. 148	3

STATUTES CITED.

Interstate Commerce Act:	
Section 1(20) (49 U. S. C. 1(20))	2
Section 205(g) (49 U. S. C. 305g)	2
Section 206(a)	2
Section 207(a)	2, 3
Judicial Code:	
Section 207 (28 U. S. C. 41 (28))	2
Section 210 (28 U. S. C. 47a)	2
Section 238(4) (28 U. S. C. 345 (4))	2
United States Code:	
Title 28, Section 44	2
Title 28, Section 47	2
Title 49, 306(a)	2
Title 49, 307(a)	2



**UNITED STATES DISTRICT COURT, DISTRICT OF
MINNESOTA, FOURTH DIVISION**

Civil Action No. 811.

**CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA
RAILWAY COMPANY, A WISCONSIN CORPORATION,
ET AL.,**

Plaintiffs,

vs.

**THE UNITED STATES OF AMERICA, INTERSTATE
COMMERCE COMMISSION, AND CORNELIUS W.
STYER, DOING BUSINESS AS NORTHERN TRANSPORTATION
COMPANY,**

Defendants;

GLENDENNING MOTORWAYS, INC.,

Intervening Defendant.

**STATEMENT AS TO JURISDICTION OF THE
SUPREME COURT OF THE UNITED STATES.**

The basis of the jurisdiction of the Supreme Court of the United States to review the final decree of the District Court is the following:

This is an action by five railroads to enjoin and annul an order of the Interstate Commerce Commission granting operating authority to a motor carrier. It was tried before a District Court of three judges and comes to the Supreme

Court on direct appeal. The District Court dismissed plaintiffs' complaint.

(a) The statutory provisions believed to sustain the jurisdiction of the Supreme Court are sections 207, 210, and 238 (4) of the Judicial Code, as amended (28 U. S. C. A. 41 (28), 47a, and 345 (4)); sections 44 and 47 of the 28 U. S. C. A.; and sections 1 (20) and 205 (g) of the Interstate Commerce Act, as amended (49 U. S. C. A. 1 (20) and 305 (g)).

(b) The final decree of the District Court sought to be reviewed was entered on the 12th day of June, 1943; and the petition for this appeal was presented on the 9th day of August, 1943.

(c) Cases believed to sustain jurisdiction are *Alton Railroad Company v. United States*, 315 U. S. 15, and *Howard Hall Company v. United States*, 315 U. S. 495.

The order of the Interstate Commerce Commission authorized defendant-appellee Cornelius W. Styer, under Section 206 (a) of the Interstate Commerce Act, to continue certain motor carrier operations claimed to have been commenced during the "grandfather" period between St. Paul, Minnesota, and South Dakota points over regular routes, east and westbound; and authorized Styer, under Section 207 (a), to institute certain new motor carrier operations alleged to be required by the present or future public convenience and necessity between St. Paul, Minnesota, and South Dakota points over regular routes, east and westbound. 49 U. S. C. A. 306 (a), 307 (a). Plaintiffs-appellants were protestants in all proceedings before the Commission.

The questions involved are substantial:

At the hearing before the Joint Board in the proceeding under the "grandfather" clause of Section 206 (a) it was

stipulated between Styer and the plaintiffs-appellants that Styer was not claiming or seeking authority to serve certain important Minnesota points, and Styer offered no evidence as to "grandfather" service to such points. Nevertheless, the Commission's order authorized service to such points and the District Court sustained the order.

In the public convenience and necessity proceeding under Section 207 (a) Styer, prior to the commencement of the hearing, filed an amendment to his application withdrawing from such application request for authority to serve certain other important Minnesota points, and defendant Styer offered no evidence as to the need for service to such points. Nevertheless, the Commission's order authorized defendant Styer to serve the points withdrawn by such amendment and the District Court sustained the order.

The Commission and the District Court erroneously failed to follow the rule of *United States v. Maher*, 307 U. S. 148. The undisputed evidence showed that during the "grandfather" period Styer's only eastbound operation was an irregular route operation from South Dakota to a number of widely scattered Minnesota points including Minneapolis-St. Paul. Styer also stipulated that he claimed and sought only an irregular route "grandfather" operation eastbound. Nevertheless, the Commission's order authorized regular route "grandfather" rights service eastbound to various important Minnesota points none of which points, except Minneapolis-St. Paul, had been served during the "grandfather" period.

There is appended hereto the opinion of the District Court.

Respectfully submitted,

WARREN NEWCOME,

AMOS M. MATHEWS,

Attorneys for Plaintiffs-Appellants.

4

APPENDIX "A".

**UNITED STATES DISTRICT COURT, DISTRICT OF
MINNESOTA, FOURTH DIVISION.**

Civil Action No. 811.

CHICAGO, SAINT PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY, a Wisconsin Corporation; GREAT NORTHERN RAILWAY COMPANY, a Minnesota Corporation; CHARLES M. THOMSON, as Trustee of the Property of Chicago & North Western Railway Company; HENRY A. SCANDRETT, WALTER J. CUMMINGS and GEORGE I. HAIGHT, as Trustees of the Property of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company; and L. C. SPRAGUE, Receiver of Minneapolis & St. Louis Railroad Company, *Plaintiffs,*

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and CORNELIUS W. STYER, Doing Business as Northern Transportation Company, *Defendants,*

and

GLENDENNING MOTORWAYS, INC., *Intervening Defendant.*

Decision.

[June 12, 1943.]

Mr. Warren Newcome, Mr. Amos Mathews, and Mr. Richard Musenbrock, for plaintiffs.

Mr. Robert L. Pierce, Special Assistant to the Attorney General, for the United States.

Mr. Nelson Thomas, Attorney, Interstate Commerce Commission, for the Interstate Commerce Commission.

Mr. Perry R. Moore for defendant Cornelius W. Styer, doing business as Northern Transportation Company.

Mr. Fred W. Putnam for Glendenning Motorways, Inc., intervening defendant.

Before Sanborn, Circuit Judge, and Joyce and Sullivan,
District Judges.

SANBORN, Circuit Judge:

This action was brought by the plaintiffs, common carriers by railroad, to enjoin and set aside in part an order of the Interstate Commerce Commission dated October 24, 1941, granting a certificate of public convenience and necessity to Cornelius W. Styer as a motor carrier of property in interstate commerce over various routes. The action is authorized by Title 28, U. S. C. A., § 41 (28), § 44, § 47 and § 48. The plaintiffs are in a position to maintain the action as competitors of Styer and protestants before the Commission in the proceedings in which the order was entered. *Alton Railroad Co. v. United States*, 315 U. S. 15.

The plaintiffs assert that the portion of the Commission's order which they challenge and which conferred upon Styer the right to receive and deliver freight at intermediate points in Minnesota on the routes designated by the Commission in its report as routes 1, 2 and 3, is without any evidentiary support and is in excess of the power of the Commission. The defendants and the intervener (which has acquired the business and operating rights of Styer) deny that the Commission's order is invalid in any respect, and assert that the plaintiffs' action is barred by laches.

The three routes referred to in this case extend from the Twin Cities (St. Paul and Minneapolis) in Minnesota to Huron and Mitchell in South Dakota, passing through many intermediate points in both states. The right to operate over routes 1 and 2 was granted by the Commission to Styer, in Docket No. MC-47644, under the "grandfather" clause of § 206 (a) of Part II of the Interstate Commerce Act [49 Stat. 543, 551; 54 Stat. 919, 923; 49 U. S. C. A. § 306 (a)], which provides:

"* * * if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made

and has so operated since that time . . . the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation”

The right to operate over route 3 was granted in Docket No. MC-47644 (Sub-No. 1) under the provisions of § 207 (a) of the same Act [49 U. S. C. A. § 307 (a)], which requires a showing that the proposed operation “is or will be required by the present or future public convenience and necessity.” The “grandfather” proceeding and the “public convenience and necessity” proceeding were decided by the Commission in a single report and order.

This case has been submitted to this statutory court of three judges upon a certified transcript of the evidence adduced before the Commission and upon evidence bearing upon the question of laches.

The first contention of the plaintiffs is that “the Commission erred in finding that Styer was entitled to ‘grandfather’ rights to pick up or deliver freight at any point on the ‘grandfather’ routes authorized in Minnesota except St. Paul and Minneapolis.”

The Commission, in the “grandfather” proceeding, authorized Styer to serve, in both directions, all points located on routes 1 and 2, finding that he was in bona fide operation as a common carrier by motor vehicle over those routes, serving all intermediate points, on June 1, 1935, and thereafter. Unless this finding of the Commission is wholly without support in the evidence, it is conclusive upon this court. We cannot concern ourselves with the question of the correctness of the finding, but only with the question of the power of the Commission to make it. The power to decide a question includes jurisdiction to decide it either correctly or incorrectly. *Pittsburgh Plate Glass Co. v. National Labor Relations Board*, 8 Cir., 113 F. 2d 698, 701. The plaintiffs contend that the finding is wholly without evidentiary support. They call attention to the following statement made by Styer’s counsel at the “grandfather” hearing:

“Applicant does not seek any rights, grandfather rights, to transport goods moving in interstate com-

merce from any Minnesota point to any Minnesota point upon the routes described, but he does seek to transport from points in South Dakota on these routes to all points in Minnesota irregularly."

The plaintiffs also refer to the following testimony of Styer relative to his operations and the "grandfather" rights which he sought:

"I claim to have a regular operation and an irregular operation in Minnesota. The regular operation is over the routes shown on Exhibit 1. The irregular territory or routes are not indicated on this exhibit. I claim to have regular and irregular operations of general commodities. The regular operation, as indicated by the routes shown on this map are the routes over which our trucks go daily and that service is given. Those trucks go through those towns over those routes whether or not they have shipments for every town on every particular day. The irregular operation, for example, would be a shipment for Albert Lea where we would not go unless we had a shipment. In that nature it is irregular. The regular route operations are more or less on a fixed time schedule. That is the bulk of my operations. The irregular operation is only supplemental to our principal operation. It is principally for back haul out of South Dakota. The movement is unbalanced between the west bound and east bound freight and consequently the occasion arises for handling freight other than that destined to points on the regular routes, to attempt to balance the amount of freight moving, so that the trucks can more nearly move loaded in both directions. When I mention Albert Lea I don't know whether or not we have served that point. I mentioned that as an example.

"What we are asking for is a territory to which we offered service prior to June 1 and to which we have offered service up to the present date, over irregular routes on loads when available because there is no direct service to that point and there is a demand for service. We wanted it as a territory, to be operated in

conjunction with our regular route operation. In other words our irregular operation is intended to take care of the movement mainly from South Dakota back into Minnesota. We are not asking for the right to transport commodities in interstate commerce from Minneapolis to Albert Lea. We are specifically restricting so as to not apply in interstate commerce between points in Minnesota. In short our operations from the Twin Cities to the South Dakota territory is chiefly our regular route operations.

"Originally we asked for territory in the entire State of Minnesota. We have now restricted that to a small territory in the southern and southwestern part of Minnesota."

It appears that the "grandfather" rights claimed by Styer in his testimony before the Commission were: (1) to transport freight from the Twin Cities to South Dakota points over regular routes, but not to Minnesota intermediate points or between such points; and (2) to transport freight from South Dakota points to all points in "a small territory in the southern and southwestern part of Minnesota" over irregular routes.

The evidence before the Commission showed that on June 1, 1935, Styer's transportation business was in its infancy; that he then had four transportation units; that his regular route operation was from the Twin Cities to South Dakota points; that he had actually rendered no service to or between intermediate Minnesota points on his routes; that his eastbound operation was to off-route points in Minnesota, but that he had served intermediate points in South Dakota on his regular routes. Styer testified, however:

"On and prior to June 1, 1935, I solicited business for intermediate points on the regular routes I operated over. I contacted personally quite a few shippers. . . . It was my purpose from the beginning to solicit and render service to the intermediate points."

While it seems probable that in this testimony Styer was referring to service from the Twin Cities to South Dakota intermediate points, since on and prior to June 1, 1935, his tariffs apparently covered no other intermediate points on his routes, we think the Commission was free to place its own interpretation upon his testimony as to the extent of service tendered.

The Commission in its report made the following statement:

"Prior to June 1, 1935 applicant served the intermediate points on routes 1, 2, 4, and 5 of Brookings, Iroquois, Forestburg, and Madison. Applicant does not claim the right to transport interstate shipments from the Twin Cities to points on his routes in Minnesota, but claims that such points were served eastbound from South Dakota. Although the proof of service at intermediate points on the above routes is not impressive, when considered in connection with the fact that operations by applicant were instituted only 2 months prior to the statutory date and the testimony of applicant that he did not limit his service to terminal points but held-out service at all intermediate points and actually solicited such business, we are convinced that he should be authorized to serve all intermediate points on routes 1, 2, 4, and 5, and that a restriction to serve certain intermediate points in one direction only would make the authority granted unnecessarily complicated and it will not be imposed."

This shows the basis for the Commission's including in the "grandfather" rights accorded to Styer authority to serve intermediate Minnesota points on routes 1 and 2.

The broad question which the Commission was required to determine in the "grandfather" proceeding was: What grant should be made to Styer under the "grandfather" clause of §206(a), in order to assure him a substantial parity between his future operations and his prior bona fide operations? See *United States v. Carolina Freight Carriers Corp.*, 315 U. S. 475, 481. The Commission was not compelled to limit Styer to the exact pattern of his

operations prior to June 1, 1935, and, in determining the scope of his "grandfather" rights, it could take into consideration the service which he was offering, as well as that which had actually been performed by him, prior to that date. *United States v. Carolina Freight Carriers Corp.*, supra, pages 483-484. It is true that an applicant has the burden of establishing his right to the statutory grant contained in the "grandfather" clause (*Alton Railroad Co. v. United States*, 315 U. S. 15, 25), and that, since that clause "confers a special privilege, the proviso defining exemptions is to be held to extend only to carriers plainly within its terms. *McDonald v. Thompson*, 305 U. S. 263, 266." *Gregg Cartage & Storage Co. v. United States*, 316 U. S. 74, 83.

The "grandfather" clause of §206(a) contemplated that a common carrier by motor vehicle should retain the place in the national transportation system which he occupied on June 1, 1935, and that the rights granted him to continue operations without proof of public convenience and necessity should equal, but not exceed, the actual service being rendered by him on that date. As was said by Mr. Justice Jackson in his dissenting opinion in *United States v. Carolina Freight Carriers Corp.*, 315 U. S. 475, 493:

"In trying to limit the injury caused by transition from a purely private enterprise to a regulated public service industry, the general plan was to preserve to private owners the transportation values evidenced by actual conditions of operation on June 1, 1935, and to exempt them from meeting the requirements of 'public convenience and necessity' as to such operation. Those who obtained such 'grandfather' rights are not, however, limited to them. They may expand their territory or extend their service by proving that public convenience and necessity will be served thereby."

See, also *McDonald v. Thompson*, 305 U. S. 263, 266; *Noble v. United States*, — U. S. —, opinion filed May 3, 1943; *Noble v. United States*, 45 F. Supp. 793, 800; *Crescent Express Lines, Inc. v. United States*, 49 F. Supp. 92, 94-95. It must be true, however, that the Commission, in determin-

ing the nature and extent of the "grandfather" rights of a carrier in a particular case, is not required to do so with mathematical precision, and that, within reasonable bounds, its estimate of the character and scope of the carrier's bona fide operation on and prior to June 1, 1935, must be accepted by the courts, which cannot substitute their judgment for that of the Commission.

The Commission has, in effect, ruled in similar proceedings that proof of actual operations as a common carrier to and from termini and some intermediate points on a regular route, coupled with evidence of a holding out of service and of a willingness and ability to serve all points on the route whenever shipments are offered, will justify a finding of bona fide operation to and between all points on the route. See Nevitt Common Carrier Application, 4 M. C. C. 298, 299-300; Consolidated Freight Lines, Inc., Common Carrier Application, 11 M. C. C. 131, 136; Knaus Common Carrier Application, 20 M. C. C. 669, 671; Los Angeles-Seattle Motor Express, Inc., Common Carrier Application, 24 M. C. C. 141, 145; Tarbet Common Carrier Application, 31 M. C. C. 63, 66-67. In the instant case, it is apparent that the Commission regarded the proof of actual service between termini and to intermediate points in South Dakota, together with the evidence which tended to prove that Styer was offering and was able to serve intermediate points, whether in Minnesota or South Dakota, on the "grandfather" routes, as sufficient to justify the grant which it made to Styer. Proper deference must be paid to the Commission's interpretation of the law which it enforces, *Gregg Cartage & Storage Co. v. United States*, 316 U. S. 74, 88, and, if there is any warrant in the record for the judgment of the Commission, it must stand. *Rochester Telephone Corp. v. United States*, 307 U. S. 125, 145-146. We think that the Commission's determination that Styer was entitled to the rights granted because of his bona fide operations as a common carrier on and prior to June 1, 1935, did not amount to an abuse of power.

We do not agree with the contention of the defendants that §208(a) of the Act [49 U. S. C. A. §308(a)], which authorizes the Commission, in issuing a certificate of public

convenience and necessity, to attach "at the time of issuance . . . to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require," confers power upon the Commission to expand the special privilege granted by the "grandfather" clause of §206(a) to those who were in actual operation as motor carriers on June 1, 1935. If, in the public interest, it is desirable that the rights to which such operators were entitled by virtue of §206(a) be expanded, the power granted to the Commission by §207(a) should be invoked to accomplish that result.

The Commission, in the "public convenience and necessity" proceeding, authorized Styer to serve all intermediate points on route 3, although he had, by amendment, withdrawn from his original application his request for authority to render "all service in interstate commerce between points in Minnesota." Sec. 207(a) provides for the issuance of a certificate authorizing operations "covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed . . . and that the proposed service . . . is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied."

The plaintiffs argue that Styer's amendment to his application was equivalent to an assertion that he was unwilling to serve intermediate points in Minnesota on route 3, and that it deprived the Commission of authority to grant him the right to serve such points. We think that this argument is too narrow and legalistic. The primary concern of the Commission with respect to operations over route 3 was the public interest and the furtherance of the transportation policy declared in the Act. We have no doubt that under §207(a) and §208(a), the Commission could condition its grant of operating rights over route 3 to meet its conception of what public convenience and necessity required of Styer. That Styer was not unwilling to accept the full grant of authority made by the Commission has since been demonstrated by his actual acceptance and use of it. In urging that Styer received greater operating

rights than he asked for or was willing to accept, it seems to us that the plaintiffs are urging a grievance which is not theirs.

We find it unnecessary to consider the question of laches.

Our conclusion is that the plaintiffs are not entitled to the relief prayed for, and that their complaint must be dismissed. Findings of fact and conclusions of law, and a decree, in conformity with this opinion, are filed herewith.

(8956)

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CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1943.

No. 482

CHICAGO, SAINT PAUL, MINNEAPOLIS & OMAHA
RAILWAY COMPANY, ET AL.,

Appellants,

vs.

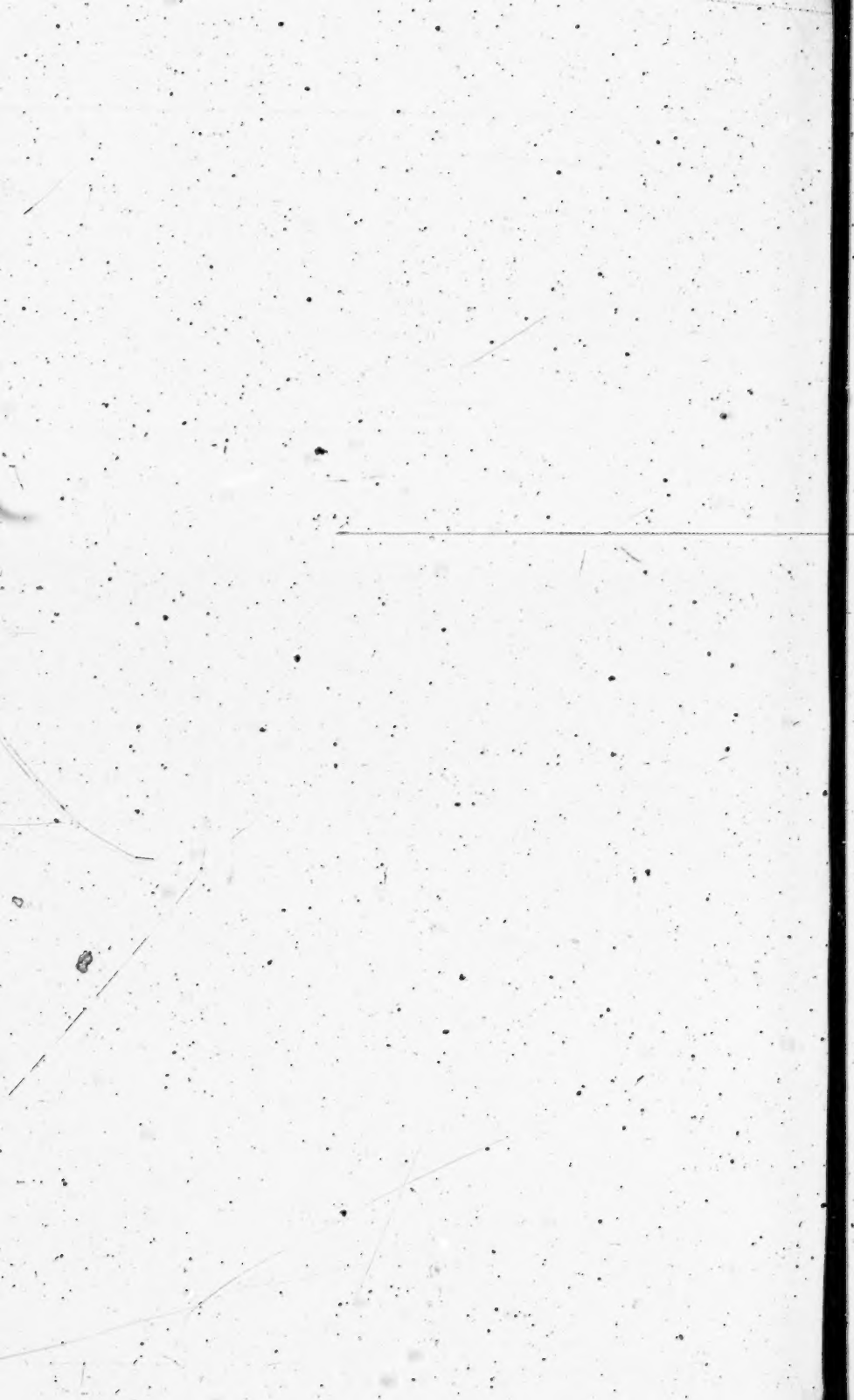
UNITED STATES OF AMERICA; INTERSTATE
COMMERCE COMMISSION; CORNELIUS W.
STYER, DOING BUSINESS AS NORTHERN TRANSPOR-
TATION COMPANY; AND GLENDENNING MOTOR-
WAYS, INC.,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF MINNESOTA.

**APPELLANTS' BRIEF OPPOSING APPELLEES'
MOTIONS TO AFFIRM OR DISMISS.**

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MOTIONS TO AFFIRM OR DISMISS.**

Separate motions to affirm or dismiss have been filed by two appellees, Cornelius W. Styer and Glendenning Motorways, Inc. This brief answers both motions.

Neither motion states with any clarity the questions sought to be reviewed. Each labors to make it appear that the only issues are those involving the exercise of the Commission's administrative discretion, which is not

the case at all. (Styer's motion states: "Service of the documents set forth in Rule 12, Paragraph 2, was made upon Appellee Styer on August 19, 1943." That is not correct. Service of the papers referred to was made on Styer's counsel on August 11, 1943. His motion was served on us on September 3, 1943.)

Our Statement as to Jurisdiction summarizes the points on which we seek review. For a more definite presentation of those points, and for the present convenience of the Court, we set out our Assignment of Errors at the end of this brief. The questions embraced in such assignment are clearly presented for decision on the record; appellees' motions make no claim to the contrary.

It is plain that our Assignment of Errors brings up questions which are substantial and which either have not been decided by this Court or have been decided by it in a way which is contrary to the action of the Commission and the District Court. Although it may involve some repetition of the combined contents of our Assignment of Errors and Statement as to Jurisdiction, we briefly summarize such questions here.

(1) In proceedings under the "grandfather" clause of Section 206 (a) of the Interstate Commerce Act, 49 U. S. C. A. 306 (a), the Commission is authorized to permit continuance of operation by a motor carrier who was "—in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time—." Does the Commission have power under that clause to authorize service to a large number of points of substantial importance when the applicant (a) has expressly stipulated that he is not making application to serve such points and (b) makes no proof of service to or of holding out service to such points during the "grandfather" period? *Alton Railroad Co.*

v. *United States*, 315 U. S. 15, 24-25, holds to the contrary, we believe.

(2) Can the Commission ignore and override a stipulation made between the parties and accepted by the Joint Board hearing the matter? The Commission's Rules of Practice in effect when the hearing took place, and its present rules of practice, expressly provide for stipulations between the parties, and state: "It is desired that the facts be thus agreed upon so far as and whenever possible." Interstate Commerce Acts Annotated, vol. 8, p. 6246, vol. 11, p. 9800. The question is substantial. It is the regular and frequent practice in hearings before the Commission to stipulate matters, including stipulations whereby claims are withdrawn or narrowed. By this familiar practice the use of many witnesses and the taking of many hundreds of pages of testimony at a single hearing may be avoided, including witnesses and testimony originally intended to oppose claims withdrawn or narrowed. The action of the Commission in granting authority to points taken out of the case by the stipulation denied appellants a full and fair hearing, because the stipulation advised them that no opposition need be made to the points withdrawn by the stipulation. Irrespective of the Commission's rules, the question is presented whether the traditional, highly useful and heretofore respected stipulation has now ceased to have any standing in law.

(3) Prior to the commencement of the hearing before the Joint Board on his public convenience and necessity application (as distinguished from his "grandfather" application) applicant filed an amendment to his application withdrawing therefrom his request for authority as to "All service in interstate commerce between points in Minnesota." This amendment was accepted by the Joint Board. Applicant presented no evidence respecting the service withdrawn by the amendment. The Commission

granted authority for such service. The questions here have some analogy to those disclosed in paragraphs (1) and (2) above. Section 207 (a) of the Interstate Commerce Act, 49 U. S. C. A. 307 (a), authorizes issuance of a certificate to an applicant who is " * * * fit, willing, and able properly to perform the service proposed * * * ." By his amendment the applicant (a) stated his unwillingness to perform the service and (b) led protestants to believe that no resistance to the withdrawn service was necessary. *There is no showing or evidence in the record to warrant the action of the Commission in disregarding this amendment; that is, there is not a hint in the record that this service is required in the public interest and that the amendment therefore ought to be disregarded. This is also true with respect to the stipulation.*

(4) The Commission and the District Court erroneously failed to follow the decision of this Court in *United States v. Maher*, 307 U. S. 148. This is fully pointed out in our Statement as to Jurisdiction.

BRIEF COMMENT ON APPELLEES' MOTIONS.

The "Motion to Affirm and Dismiss" filed by appellee Styer consists of 25 typewritten legal cap pages. It goes at length into both facts and law. It is very noticeable, however, that this motion does not take up our assignments of error *seriatim*, or in any recognizable order, to show that they present no substantial questions. Surely, if the errors alleged are unsubstantial that situation could be shown by a brief discussion of each error point and citation of apt authority. A motion such as appellee's, dealing at length with the merits, suggests that the questions are substantial.

The motion of appellee Glendenning Motorways, Inc., while not long, can be read through without obtaining the

st suggestion as to the nature of the points raised in
Assignment of Errors.

It is respectfully submitted that our Statement as to
jurisdiction, our Assignment of Errors, and this brief
make it clear that the Court should note probable jurisdic-
tion.

WARREN NEWCOME,
AMOS M. MATHEWS,
Attorneys for Appellants.

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL.

The District Court erred in its final decree dismissing plaintiffs' complaint, and in its opinion, findings of fact, and conclusions of law upon which its decree is based, in the following respects:

1.

The order of the Interstate Commerce Commission authorized defendant-appellee Styer to continue alleged "grandfather" operations under Section 206 (a) of the Interstate Commerce Act over regular routes between St. Paul, Minnesota, and points in South Dakota, and to serve all Minnesota points on such routes east and westbound. The order was erroneous and should have been annulled by the District Court as to all points in Minnesota except St. Paul and Minneapolis, for the following reasons:

(a) A stipulation was made during the hearing before the Joint Board, between Styer and the plaintiffs-appellants, that Styer did not claim and was not seeking the right "to transport goods moving in interstate commerce from any Minnesota point to any Minnesota point" upon the "grandfather" routes.

(b) There is no evidence that during the "grandfather" period Styer picked up or delivered any freight at any of the Minnesota points except St. Paul and Minneapolis, or held out to serve such points.

(c) The evidence shows without conflict that during the "grandfather" period Styer's eastbound operation was an irregular route operation to scattered points in Minnesota, that he did not conduct an eastbound regular route operation, and that he did not serve any of the

points for which authority was granted by the Commission's order except St. Paul and Minneapolis.

(d) Styer made the further statement in said stipulation that "he does seek to transport from points in South Dakota on these routes to all points in Minnesota irregularly," thereby claiming irregular route "grandfather" rights eastbound but not regular route rights.

2.

The Commission's order authorized Styer to begin new operations over regular routes between St. Paul, Minnesota, and points in South Dakota, serving all Minnesota points on such routes, both east and westbound, under Section 207 (a) which requires a showing that such operations are required by present or future public convenience and necessity. The order was erroneous and should have been annulled by the District Court as to all points in Minnesota except St. Paul and Minneapolis, for the following reasons:

(a) Prior to the hearing on his application before the Joint Board Styer filed an amendment to his application withdrawing from such application his request for authority as to "All service in interstate commerce between points in Minnesota."

(b) There is a complete absence of evidence that present or future public convenience and necessity requires such service to said Minnesota points.

Wherefore, plaintiffs-appellants pray that the decree of the District Court be reversed and that a decree be entered as indicated hereinabove.

WARREN NEWCOME,

AMOS M. MATHEWS,

Attorneys for Plaintiffs-Appellants.

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APPELLANTS' BRIEF.

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APPELLANTS' BRIEF.

OPINIONS BELOW.

The opinion of the District Court is reported in 50 F.
Supp. 249. (R. 56.) The report of the Interstate Com-
merce Commission (R. 5) is not published in its official
reports.

JURISDICTIONAL STATEMENT.

Statement as to jurisdiction was filed, and probable jurisdiction noted on December 13, 1943. (R. 211.)

This is an action by appellants to annul an order of the Interstate Commerce Commission, tried before a district court of three judges, 28 U. S. C. A. 41 (28), 44, 47, 47a, and brought to this Court by direct appeal from the decree dismissing appellants' complaint, 28 U. S. C. A. 345 (4). *Alton Railroad Co. v. United States*, 315 U. S. 15.

STATEMENT OF THE CASE.

Appellants, five railroads operating in Minnesota and South Dakota (and elsewhere), sued appellees to annul an order and certificate of the Commission granting operating authority as a motor carrier to appellee Cornelius W. Styer, doing business as Northern Transportation Company. Appellee Glendenning Motorways, Inc., is the present owner of such certificate, by purchase from Styer.

At the trial in the district court appellants introduced in evidence a certified transcript of the proceedings before the Commission. Appellees Styer and Glendenning Motorways, Inc., introduced evidence in support of their claim that appellants' right to sue is barred by laches arising from delay in the commencement of the action.

Two classes of rights are included in the order and certificate. Certain of such rights were granted, in Commission Docket No. MC-47644, under the "grandfather" clause of section 206(a) of Part II of the Interstate Commerce Act, 49 U. S. C. A. 306(a), which provides:

" * * * if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time * * * the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation * * * "

Certain other of such rights were granted, in Docket No. MC-47644, Sub. No. 1, under the provisions of Sections 206(a) and 207(a), 49 U. S. C. A. 306(a), 307(a), which require a showing that the proposed service "is or will be

required by the present or future public convenience and necessity."

Separate hearings were held in the proceedings under each docket number. The Commission issued a single report and order and certificate covering both. (R. 5, 18.) In each proceeding the authority granted was to operate in both directions over certain Minnesota and South Dakota highways to and from each point on such highways (with one exception to be noted).

The routes authorized are shown on the map, prepared by appellants, which is inside the back cover page of this brief. The single black line represents the highways over which "grandfather" rights were granted in Docket No. MC-47644. Service was authorized to and from all points on such highways. The double black line represents the highways over which rights were granted in Docket No. MC-47644, Sub. No. 1, based on a claim of public convenience and necessity. Service was authorized to and from all points on such highways. The exception heretofore referred to is the following. In the "grandfather" case Styer was authorized to operate over the highways represented by the double black line between the Twin Cities (St. Paul-Minneapolis) and Mitchell, South Dakota, both ways, serving only the termini named and not serving the intermediate points.

Styer exhibits 1 and 2 before the Commission (R. 126A) are, respectively, maps of Minnesota and South Dakota, offered by Styer to indicate the authority sought. The legend "B. M. C.-1 routes" means routes over which "grandfather" rights were sought. "B. M. C.-8 routes" means routes over which authority was sought on grounds of public convenience and necessity. "Compliance order routes granted" indicates routes over which "grandfather" authority was granted by a Commission order dated June

8, 1938, which was set aside on September 15, 1938, after Styer filed exceptions to it. The 1938 order did not authorize service to any intermediate point in Minnesota.

In the "grandfather" case, it was stipulated by the parties that Styer did not claim "grandfather" rights and was not applying for authority to carry property in interstate commerce from any Minnesota point to any Minnesota point. (R. 97.) Styer offered no evidence as to any operations during the "grandfather" period from any Minnesota point to any Minnesota point. Styer made the claim through counsel, and testified and presented evidence in support of such claim, that his *eastbound* "grandfather" operation from South Dakota to Minnesota consisted of an *irregular* route operation to widely scattered Minnesota points, none of which were on the *regular* "grandfather" routes granted by the Commission. (R. 97-98, 102-106.)

In the public convenience and necessity case Styer filed, before the case was heard, a written amendment to his application which was accepted by the Joint Board hearing the case. (R. 190.) Among other things the amendment withdrew from the application request for authority as to "all service in interstate commerce between points in Minnesota." (R. 196.) Styer offered no evidence respecting the need for the service to or from the points withdrawn by the amendment. (R. 190-195.)

Appellants filed a petition for reconsideration of the report and order of the Commission, Division 5, and this was denied on April 6, 1942. (R. 3, 23.) Appellants commenced this action on October 30, 1942. (R. 1.)

ASSIGNMENT OF ERRORS.

The District Court erred in its final decree dismissing plaintiffs' complaint, and in its opinion, findings of fact, and conclusions of law upon which its decree is based, in the following respects:

1.

The order of the Interstate Commerce Commission authorized defendant-appellee Styer to continue alleged "grandfather" operations under Section 206 (a) of the Interstate Commerce Act over regular routes between St. Paul, Minnesota, and points in South Dakota, and to serve all Minnesota points on such routes east and westbound. The order was erroneous and should have been annulled by the District Court as to all points in Minnesota except St. Paul and Minneapolis, for the following reasons:

(a) A stipulation was made during the hearing before the Joint Board, between Styer and the plaintiffs-appellants, that Styer did not claim and was not seeking the right "to transport goods moving in interstate commerce from any Minnesota point to any Minnesota point" upon the "grandfather" routes.

(b) There is no evidence that during the "grandfather" period Styer picked up or delivered any freight at any of the Minnesota points except St. Paul and Minneapolis, or held out to serve such points.

(c) The evidence shows without conflict that during the "grandfather" period Styer's eastbound operation was an irregular route operation to scattered points in Minnesota, that he did not conduct an eastbound regular route operation, and that he did not serve any of the points

for which authority was granted by the Commission's order except St. Paul and Minneapolis.

(d) Styer made the further statement in said stipulation that "he does seek to transport from points in South Dakota on these routes to all points in Minnesota irregularly," thereby claiming irregular route "grandfather" rights eastbound but not regular route rights.

2.

The Commission's order authorized Styer to begin new operations over regular routes between St. Paul, Minnesota, and points in South Dakota, serving all Minnesota points on such routes, both east and westbound, under Section 207 (a) which requires a showing that such operations are required by present or future public convenience and necessity. The order was erroneous and should have been annulled by the District Court as to all points in Minnesota except St. Paul and Minneapolis, for the following reasons:

(a) Prior to the hearing on his application before the Joint Board Styer filed an amendment to his application withdrawing from such application his request for authority as to "All service in interstate commerce between points in Minnesota."

(b) There is a complete absence of evidence that present or future public convenience and necessity requires such service to said Minnesota points.

SUMMARY OF ARGUMENT.

THE "GRANDFATHER" CASE.

The Commission's order authorized Styer to operate over regular routes between St. Paul-Minneapolis and South Dakota points, serving all intermediate points both east and westbound.

The order was erroneous in authorizing westbound service to the intermediate Minnesota points for two reasons: (1) Styer stipulated that he was not claiming "grandfather" rights to carry property in interstate commerce between Minnesota points. (2) There was no evidence that Styer was in *bona fide* operation to any intermediate Minnesota point during the "grandfather" period.

The order was erroneous in authorizing eastbound service to the intermediate Minnesota points because Styer's evidence showed that during the "grandfather" period he was engaged in an irregular route service eastbound from South Dakota points to widely scattered Minnesota points, none of which were on the regular routes in Minnesota authorized by the order.

PUBLIC CONVENIENCE AND NECESSITY CASE.

The Commission found that public convenience and necessity require operation by Styer over regular routes between St. Paul-Minneapolis and points in South Dakota, serving all intermediate points on such routes in both directions. The Commission's order was erroneous

in authorizing service to the intermediate points in Minnesota for two reasons: (1) Prior to the hearing Styer filed an amendment to his application withdrawing therefrom request for authority for service in interstate commerce between points in Minnesota. (2) There is no evidence in the record showing public convenience and necessity for service to the intermediate Minnesota points.

ARGUMENT.

I.

"GRANDFATHER" RIGHTS SHOULD NOT HAVE BEEN GRANTED TO SERVE ANY POINTS IN MINNESOTA EXCEPT ST. PAUL-MINNEAPOLIS.

In the "grandfather" proceeding the Commission's order authorized Styer to pick up and deliver freight, both east and westbound, at all points in Minnesota on the highways represented by the single black lines on the map which is inside the back cover page of this brief. It is our contention that no "grandfather" rights should have been authorized with respect to any Minnesota points on such highways except Minneapolis-St. Paul, hereinafter referred to as the Twin Cities. As somewhat different questions are involved in the east and westbound operations they will be considered separately.

1. WESTBOUND "GRANDFATHER" SERVICE TO MINNESOTA POINTS.

There are two independently sufficient reasons why the Commission erred in granting westbound "grandfather" authority to the intermediate Minnesota points:

(a) Styer stipulated that he was not claiming the right to carry property in interstate commerce between Minnesota points.

(b) There was no evidence that Styer was in bona fide operation to any intermediate Minnesota point during the "grandfather" period.

THE STIPULATION.

At the hearing before the Joint Board the following took place between Mr. Janes, representing the railroad protestants, and Mr. Moore, representing the applicant; Mr. Norgaard was chairman of the Joint Board (R. 97):

"Mr. Janes: Do I understand that the applicant is seeking grandfather rights into any of the Minnesota towns located on the routes he has referred to as regular routes in his exhibit, map of Minnesota, Exhibit 1?

"Mr. Moore: Applicant does not seek any rights, grandfather rights, to transport goods moving in interstate commerce from any Minnesota point to any Minnesota point upon the routes described, but he does seek to transport from points in South Dakota on these routes to all points in Minnesota irregularly. If that is not clear, I can amplify it further.

"Mr. Norgaard: I should think that would be clear enough.

"Mr. Moore: From the Twin Cities to any Minnesota points goods moving in interstate commerce, we don't propose to transport under this application."

(fol. 128) "Mr. Janes: You would not take a shipment from Chicago and deliver it to applicant's truck line at New Ulm, Mankato or any other points on these regular routes?

"Mr. Moore: That is correct.

"Mr. Janes: Those are marked on your map Exhibit 5, I think?

"Mr. Moore: All of those described in the application.

"Mr. Janes: That is a correct statement?

"Mr. Moore: Yes.

"Mr. Janes: But you do claim rights in South Dakota, when you pick up commodities in South Dakota, to deliver those commodities in Minnesota, to points in Minnesota on those routes?

"Mr. Moore: Yes.

"Mr. Norgaard: Amplify that.

"Mr. Moore: Applicant does not claim grandfather rights under this application to transport goods moving in interstate commerce from points in Minnesota to other points in Minnesota; but this is in no way a waiver of his claim under the application to transport goods from authorized points in South Dakota, regular routes and the territory as described by those routes to any point in Minnesota. (pp. 96-97.)"

Styer later testified as follows:

"We are not asking for the right to transport commodities in interstate commerce from Minneapolis to Albert Lea. We are specifically restricting so as to not apply in interstate commerce between points in Minnesota." (R. 104.)

EFFECT OF THE STIPULATION.

The effect of the stipulation was to withdraw from the proceeding the issue with respect to authority to provide service between Minnesota points. *Milne Lumber Company v. Detroit, Grand Haven & Milwaukee Railway Company, et al.*, 146 I. C. C. 514; *Charges for Protective Service to Perishable Freight*, 215 I. C. C. 684, 692; *Seattle, L. & S. Ry. Co. v. Union Trust Co.*, 79 Fed. 179, 188 (C. C. A. 9); *Williston on Contracts*, 1936 Rev. Ed., par. 204A.

Therefore, after the stipulation was in the record the issue with respect to service between Minnesota points was not before the Commission and any evidence that previously may have been received in this connection either disappeared from the case or became irrelevant. The effect of the stipulation was to advise appellants that it would not be necessary and that they would not be permitted to introduce any evidence with respect to the previously claimed rights to provide service between Minnesota points. Were this not true and if the Commission was thereafter per-

mitted to pass on the withdrawn issue and consider evidence previously introduced to support a finding in that connection, appellants would be deprived of a full and fair hearing. As stated by this Court in *Morgan v. United States*, 304 U. S. 1, 18:

"The right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of an opposing party and to meet them."

After the stipulation became a part of the record appellants had the right to assume that the issue covered by the stipulation was no longer in the case and that they were not required to present any evidence relating to that issue. If the action of the Commission and the District Court, in disregarding the stipulation and basing a finding upon evidence previously introduced relating to the issue withdrawn, is upheld, the result will be to deprive the protestants of the right to meet that issue and of a fair hearing.

Furthermore, if parties appearing in cases before the Commission are now to be advised that they cannot depend upon stipulations entered into at the hearing, that is going to impose a great volume of additional work upon parties and upon the Commission. Every person who has ever practiced before the Commission knows that on numerous occasions stipulations between parties, made during the course of the hearing, withdraw issues and thereby obviate the necessity of one or many witnesses testifying. Are Commission examiners now to be told that, despite stipulations of the parties withdrawing issues, they must nevertheless permit introduction of full and complete evidence on the withdrawn issues in order that parties may surely protect their interests?

THERE WAS NO EVIDENCE THAT STYER WAS IN BONA FIDE OPERATION TO ANY INTERMEDIATE MINNESOTA POINT DURING THE "GRANDFATHER" PERIOD.

Without regard to the stipulation, the Commission's order was erroneous because there is no evidence of operation during the "grandfather" period to any intermediate Minnesota point. Styer commenced operation as a common carrier of property by motor vehicle on April 1, 1935 (R. 90). Up to and including June 1, 1935, the "grandfather" date, he had not picked up or delivered any freight at any point in Minnesota on the routes represented by the single black lines on the map, except the Twin Cities. This appears without question from Styer Exhibits 3 (R. 127), 15 and 16 (R. 166). These three exhibits are abstracts made by Styer from his freight bills showing all points in Minnesota and South Dakota at which freight was picked up and delivered during the period of his operation to and including June 1, 1935 (and for some months thereafter). Exhibit 3 was the original exhibit prepared to show this information and exhibits 15 and 16 are supplementary thereto. Although the exhibits show a large number of shipments, they fail to show any to or from any Minnesota points on the "grandfather" routes, other than the Twin Cities, on or prior to June 1, 1935.

DISTRICT COURT'S FINDINGS.

The District Court made the following findings of fact with respect to Styer's "grandfather" service. ("Routes 1 and 2" are the "grandfather" routes in question):

"4. There was no evidence adduced before the Commission that prior to June 1, 1935, Styer had transported any commodities to or from intermediate points in Minnesota on routes 1 and 2. The evidence was that prior to that date Styer had transported commodities from the Twin Cities (St. Paul and Minne-

apolis) in Minnesota to Huron and Mitchell in South Dakota over routes 1 and 2, had served intermediate points in South Dakota thereon; and had transported commodities from South Dakota points to points in Minnesota which were not on routes 1 and 2." (R. 66.)

And in its opinion the Court said (R. 60):

"It appears that the 'grandfather' rights claimed by Styer in his testimony before the Commission were: (1) to transport freight from the Twin Cities to South Dakota points over regular routes, but not to Minnesota intermediate points or between such points; and (2) to transport freight from South Dakota points to all points in 'a small territory in the southwestern part of Minnesota' over irregular routes."

It is true that the Court found (R. 66):

"5. There was evidence before the Commission sufficient to justify the inference that prior to June 1, 1935, Styer was able to serve intermediate points in Minnesota on routes 1 and 2; and had held out service to such points."

But in its opinion the Court explained this finding as follows (R. 60):

"The evidence before the Commission showed that on June 1, 1935, Styer's transportation business was in its infancy; that he then had four transportation units; that his regular route operation was from the Twin Cities to South Dakota points; that he had actually rendered no service to or between intermediate Minnesota points on his routes; that his eastbound operation was to off-route points in Minnesota, but that he had served intermediate points in South Dakota on his regular routes. Styer testified, however:

"On and prior to June 1, 1935, I solicited business for intermediate points on the regular routes I operated over. I contacted personally quite a few shippers. * * * It was my purpose from the beginning to solicit and render service to the intermediate points."

"While it seems probable that in this testimony Styer was referring to service from the Twin Cities to South Dakota intermediate points, since on and prior to June 1, 1935, his tariffs apparently covered no other intermediate points on his routes, we think the Commission was free to place its own interpretation upon his testimony as to the extent of service rendered."

COMMISSION'S FINDINGS.

With respect to the westbound "grandfather" operations the Commission found:

"There is no doubt that applicant transported commodities of a general nature between Minneapolis and St. Paul, hereinafter called the Twin Cities, within which term we shall also include South St. Paul, Minn., on the one hand, and, on the other, Brookings, Huron, and Mitchell, S. Dak." * * * (R. 9.)

"Prior to June 1, 1935 applicant served the intermediate points on routes 1, 2, 4, and 5 of Brookings, Iroquois, Forestburg, and Madison.¹ Applicant does not claim the right to transport interstate shipments from the Twin Cities to points on his routes in Minnesota, but claims that such points were served east-bound from South Dakota. Although the proof of service at intermediate points on the above routes is not impressive, when considered in connection with the fact that operations by applicant were instituted only 2 months prior to the statutory date and the testimony of applicant that he did not limit his service to terminal points but held out service at all intermediate points and actually solicited such business, we are convinced that he should be authorized to serve all intermediate points on routes 1, 2, 4, and 5, and that a restriction to serve certain intermediate points in one direction only would make the authority granted unnecessarily complicated and it will not be imposed." (R. 10-11.)

1. All in South Dakota.

COMMISSION'S FINDINGS ERRONEOUS.

There are three errors in that statement, to which we call attention briefly:

(1) The Commission stated: "—the proof of service at intermediate points on the above routes is not impressive—." If the Commission was referring to intermediate Minnesota points its statement is obviously in error because the plain and undisputed evidence shows *no service whatsoever* to intermediate Minnesota points on the "grandfather" routes on and prior to June 1, 1935, either westbound or eastbound.

(2) Although recognizing that applicant was not claiming westbound "grandfather" rights to intermediate Minnesota points, the Commission nevertheless gave him such westbound authority because it erroneously concluded that he was entitled to eastbound "grandfather" rights to the intermediate Minnesota points and it thought he should not be restricted to serve intermediate points in one direction (eastbound) only. So it appears that the Commission was led by its erroneous conclusion as to Styer's eastbound operation (to be considered in detail hereinafter) to disregard entirely Styer's stipulation disclaiming westbound "grandfather" rights to the Minnesota intermediate points and the entire lack of evidence to support such rights.

(3) The Commission referred to "—the testimony of applicant that he did not limit his service to terminal points but held out service at all intermediate points and actually solicited such business—." It is submitted: (a) There is no evidence as to any such holding out as to Minnesota points. (b) The Commission overlooked the fact that the testimony of applicant referred to was adduced prior to the time when applicant by stipulation and direct testimony specifically disclaimed any "grandfather" rights to serve westbound intermediate points in Minnesota. (c)

Such "holding out" would be insufficient to establish "grandfather" rights in any event.

With respect to the facts of "holding out," it is evident that since Styer was not claiming any westbound "grandfather" rights to intermediate Minnesota points, he was not "holding out" to render such service. And the evidence affirmatively shows no such holding out; it shows that Styer's solicitation and holding out, as to westbound operations, was for service from the Twin Cities, on the one hand, to South Dakota points on the other hand. This appears clearly from Styer's testimony, from the last paragraph on page 92 of the record to the top of page 94, and Styer's Exhibit 5. (R. 134.) The exhibit is a schedule of rates from the Twin Cities to South Dakota points; no intermediate Minnesota points appear upon it. Styer's testimony, above referred to, is all to the effect that the service he held out to shippers westbound from the Twin Cities during the "grandfather" period was to the points shown on Exhibit 5; he definitely related what he called the "intermediate points" to which he was holding out service to the points on Exhibit 5.

As indicated, the District Court construed Styer's testimony with respect to "holding out" as applicable only to the South Dakota intermediate points. Assuming, for purpose of argument, that in the first instance, and prior to Styer's express disclaimer, the Commission would be justified in relating such testimony to all intermediate points, certainly there would be no warrant for doing so after Styer expressly disclaimed any "grandfather" rights to provide service for intermediate Minnesota points and this issue had been withdrawn from the case. In basing a finding of "grandfather" rights with respect to Minnesota points in westbound service the Commission not only went outside of the issue but adopted testimony, which was later

repudiated, in support of a finding in relation to an issue not in the case.

Assuming that Styer had meant to include the intermediate Minnesota points within the scope of his testimony and ignoring for the moment its later withdrawal, it is submitted that holding out of that attenuated character is wholly insufficient to establish "grandfather" rights. In *McDonald v. Thompson*, 305 U. S. 263, 266, the Court said that the concept of "bona fide operation" necessary for the establishment of "grandfather" rights

"* * * excludes the idea that mere ability to serve as a common carrier is enough, includes actual rather than potential or simulated service * * *."

In *Crescent Express Lines, Inc. v. United States*, 88 L. Ed. adv. 143, decided December 6, 1943, the applicant for "grandfather" rights, who had been conducting an irregular route common carrier passenger service in six-passenger vehicles, asked for authority to use in such business buses of larger seating capacity. The Court held that the Commission properly limited the "grandfather" certificate to six-passenger vehicles, saying:

"We are of the view that the power of the Commission to limit the certificate as it proposes to do is in accord with the purposes of the Motor Carrier Act. When Congress provided for certificates to cover all carriers which were already in operation, it did not throw open the motor transportation system to more destructive competition than that already existing."

To the same effect are *Noble v. United States*, 319 U. S. 88, and *Alton Railroad Co. v. United States*, 315 U. S. 15. In the *Alton* case the carrier had actually served the State of Arkansas before June 1, 1935, but had made no deliveries there for more than a year after that date. In holding that the applicant had failed to keep initiated "grandfather" rights alive the Court said (p. 25):

"A mere holding out will not alone suffice to bridge

the long gap extending through and beyond one entire automobile production year, since applicant carries the burden of establishing his right to the statutory grant." (Emphasis supplied.)

**MERE OPERATION OVER ROUTE INSUFFICIENT TO ESTABLISH
"GRANDFATHER" RIGHTS.**

It may be suggested that since Styer traveled westbound over regular "grandfather" routes he should be given "grandfather" rights to all Minnesota intermediate points on such routes regardless of the fact that he served none of them. The Commission has consistently held that mere operation over a highway is not sufficient to lay a foundation for "grandfather" rights to serve points on that highway to which no actual service is made during the "grandfather" period. *W. D. Gill Common Carrier Application*, 29 M. C. C. 475; *Denver-Chicago Trucking Company Common Carrier Application*, 27 M. C. C. 343. In the *Gill Application* the Commission said (p. 476):

"In his petition, applicant contended that, having been found by us to have been in bona fide operation over the routes in question, he has a vested right to serve all points along those routes, and that the denial of any of such points is contrary to the requirements of the 'grandfather' clause of section 206 (a) of the act that we issue a certificate if the applicant or predecessor was in bona fide operation on June 1, 1935, 'over the route or routes or within the territory.' With this contention we do not agree. Section 208 (a) of the act specifically provides:

"Any certificate issued under section 206 or 207 shall specify the service to be rendered * * * and the intermediate * * * points, if any, at which * * * the motor carrier is authorized to operate; * * * ." (Emphasis supplied.)

Applicable to this point also are the several decisions of this Court last above cited.

The principle that mere operation over a route is insufficient to establish "grandfather" rights is particularly applicable here because it is clear from the evidence above set out and discussed that what Styer intended to carry on, and was carrying on, was a service *between the Twin Cities and South Dakota points*. To authorize him to serve the intermediate Minnesota points would vastly increase the scope of the operations he was actually conducting during the "grandfather" period.

McCracken Case Erroneously Decided.

In *McCracken v. United States*, 47 F. Supp. 444 (D. C. Ore.), the Court apparently held that the Commission is empowered, in a "grandfather" rights case, to require the applicant to serve points as to which he has not established "grandfather" rights or which he may not want to serve.

It is submitted that this decision is clearly erroneous. The Commission itself held expressly to the contrary in *Pan-American Bus Lines Operation*, 1 M. C. C. 190. The question there was whether a bus company could limit its operation to certain large terminal and large intermediate points and refuse to serve certain smaller intermediate points. The Commission found that an applicant could so restrict the scope of the authority desired and that it had no power to require service to intermediate points, saying, in part (pp. 205-206):

"The definition of 'common carrier by motor vehicle' in section 203 (a) (14) recognizes that common carriers of property may restrict their operations to a 'class or classes of property', but does not indicate that common carriers of passengers may similarly restrict their operations to a class or classes of passengers. However, it appears that *common carriers, whether of property or passengers, may restrict their operations to certain named points*, for it is provided in section 208 (a) that a certificate shall specify 'the

service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, * * *, the motor carrier is authorized to operate.''' (Emphasis supplied.)

The error of the Oregon District Court is also clearly shown by a comparison of Parts I and II of the Interstate Commerce Act, regulating, respectively, railroads and motor carriers. Section 1 (18) requires railroads to obtain certificates of convenience and necessity before building lines or rendering service, and the corresponding requirements respecting motor carriers are found in Sections 206 (a) and 208 (a). But section 1 (21) is expressly and entirely devoted to giving the Commission power to *compel railroads* to extend their lines or render service against their will, while the granting of any corresponding power to the Commission with respect to motor carriers is entirely lacking, even by inference. In construing Part II of the Interstate Commerce Act the Commission has been very careful to hold to the rule, a familiar principle of statutory construction, that where Part I contains an express provision relating to railroads, but there is no corresponding express provision in Part II relating to motor carriers, it will be presumed that Congress did not intend to carry that provision or any similar powers or requirements into Part II. See *Barrows Porcelain Enamel Co. v. Cushman Motor Delivery Co.*, 11 M. C. C. 365, 366, where the Commission said:

"Part I of the Interstate Commerce Act contains specific provisions which empower us to award reparation thereunder. No such provisions, however, are embraced, either specifically or by necessary implication, in the Motor Carrier Act, 1935. If the Congress had intended to grant us such broad authority, it clearly would have done so in unmistakable language. In the absence of such language, we must conclude

that we are without power to award reparation in instances where it is found that the provisions of the Motor Carrier Act, 1935, have been violated."

Part I of the Act contains the "commodities clause", section 1 (8), forbidding railroads, with minor exceptions, to haul their own property, and the "long and short haul" clause, section 4. Part II contains no similar restrictions on motor carriers. No one, except perhaps those who advocate the *McCracken* case theory, would suggest that Congress, by omitting to include these restrictions in Part II, intended to have them apply to motor carriers. Yet it is just as sensible to say that section 1 (21) which specifically permits the Commission to compel railroad extensions was intended by Congress to apply to motor carriers even though Congress failed to carry its provisions or anything remotely resembling them into Part II.

There are other errors in the Court's decision which are apparent on its face, such as the statement citing, but contrary to, *Alton Railroad Co. v. United States*, 315 U. S. 15: "No notice is required to competitors," etc. In making that statement the Oregon Court obviously overlooked Section 205 (e) of the Interstate Commerce Act.

2 EASTBOUND SERVICE TO MINNESOTA POINTS.

Styer's evidence shows that the only eastbound service he was either holding out or rendering during the "grandfather" period was an irregular route service to many widely scattered points in Minnesota, none of which, except the Twin Cities, were on the regular routes for which "grandfather" authority was granted. In authorizing this regular route service in the face of the undisputed evidence that Styer had been conducting an irregular route service during the "grandfather" period the Commission acted contrary to the rule of *United States v. Maher*, 307 U. S.

Styer testified before the Joint Board (R. 103-105):

"What we are asking for is a territory to which we offered service prior to June 1 and to which we have offered service up to the present date, over irregular routes on loads when available because there is no direct service to that point and there is a demand for service. We wanted it as a territory, to be operated in conjunction with our regular route operation (p. 280). *In other words our irregular operations is intended to take care of the movement mainly from South Dakota back into Minnesota.* We are not asking for the right to transport commodities in interstate commerce from Minneapolis to Albert Lea. We are specifically restricting so as to not apply in interstate commerce between points in Minnesota. *In short our operations from the Twin Cities to the South Dakota territory is chiefly our regular route operations* (p. 281). (Emphasis supplied.)

"Originally we asked for territory in the entire State of Minnesota. We have now restricted that to a small territory in the southern and southwestern part of Minnesota. Exhibit 26 shows a line drawn in Minnesota over U. S. 52 from its junction with the Minnesota-Iowa line to its junction with Minnesota Highway 28 and thence over the latter highway to its junction with the South Dakota-Minnesota line. That line shows the outer boundaries of our territory in Minnesota and it is in that territory that we are claiming operating rights (p. 282, 283)." (R. 103-104.)

"Q. Now look at the green dots on the map of Minnesota. Now did you serve from your South Dakota points around June 1, 1935, those Minnesota points or those Minnesota points to the South Dakota points?

"A. Yes.

"Q. What are they, read them.

"A. Moorehead, Bemidji, Detroit Lakes, Fergus Falls, Hill City, Grand Rapids, Two Harbors, Duluth, Atkinson, Brainerd, Little Falls, Sauk Center, Pine City, Ortonville, Willmar, Montevideo, Granite Falls, Owatonna, Waseca, Winona, Rochester, Albert Lea,

Blue Earth. Those are most of them, I may have missed some of them.

"Q. Baker and Grand Rapids?

"A. Baker is not marked in green here; but I do recall that we handled shipments to Baker.

"Q. Did you name Redwood Falls and Marshall?

"A. Redwood Falls and Marshall are on the route. I made no manifests or trip sheets or bills as to these shipments (pp. 304-305)." (R. 105.)

A short time before that testimony Styer's counsel had said:

"Applicant does not seek any rights, grandfather rights, to transport goods moving in interstate commerce from any Minnesota point to any Minnesota point upon the routes described, but he does seek to transport from points in South Dakota on these routes to all points in Minnesota irregularly." (R. 97.)

For convenience the cities named in the foregoing testimony are checked with green marks on our map. It will be seen (1) that they are scattered all over Minnesota, and (2) that none of the points named are on the "grandfather" routes authorized, except for the ambiguous reference to Redwood Falls and Marshall. With respect to those two cities, Styer's evidence shows that the first service to them was *after* June 1, 1935. (R. 132.)

DISTRICT COURT'S FINDINGS.

The District Court's findings set out above in discussing the westbound service contain also the findings as to eastbound service. For convenience we repeat part of these briefly. The Court found (R. 66) that prior to the "grandfather" date Styer had not transported any commodities to or from intermediate points in Minnesota on routes 1 and 2 (the "grandfather" routes) but that he

"* * * had transported commodities from South Dakota points to points in Minnesota which were not on routes 1 and 2."

And in its opinion the Court said that the eastbound "grandfather" rights claimed by Styer were (R. 60):

" * * * (2) to transport freight from South Dakota points to all points in 'a small territory in the southern and southwestern part of Minnesota' over irregular routes.

"The evidence before the Commission showed that on June 1, 1935, * * * his eastbound operation was to off-route points in Minnesota * * *."

COMMISSION'S FINDINGS.

With respect to the eastbound "grandfather" service the Commission made the following findings in its report:

"In addition to the operations conducted over regular routes described above, applicant also claims to have been engaged in the transportation of general commodities over irregular routes between points in that part of South Dakota described in his amended 'grandfather' application, on the one hand, and on the other, points in Minnesota." (R. 11.)

Reference to the report will show that the "regular routes" so referred to involve only the *westbound* "grandfather" operations and no eastbound operation. After making the foregoing statement, the report analyzes Styer's evidence and concludes, on the basis of that evidence, (a) that during the "grandfather" period Styer's eastbound operation was an irregular route operation, and (b) that sometime *after* June 1, 1935, and by 1938, that operation had "evolved" into a regular route operation. The report then states:

"While the testimony of applicant as to operations over irregular routes as substantiated by reference to particular shipments handled before June 1, 1935, might warrant granting of authority to operate over irregular routes, the complete documentary evidence covering a subsequent period during 1938 strongly indicates that applicant's business has evolved into

amounts to an acquiescence." *Mary Jane Stevens Co. v. First Nat. Bldg. Co.*, 57 Pac. (2d) 1099, 1125 (Utah). Here appellants had no notice or knowledge of the lease or sale until after it had been consummated.

THERE WAS NO CHANGE OF POSITION BY APPELLEES.

The defense of laches is not open to appellees because there was no change of position by them by reason of the alleged delay in commencing the action. This is clearly shown by appellees' own evidence.

EVIDENCE AS TO STYER.

The evidence respecting Styer's plea of laches divides into two phases. The first phase comprises the period from the start of his operations, April 1, 1935, to the date appellants' petition for reconsideration was overruled, April 6, 1942. During that period Styer expanded his business, added to his equipment, went heavily into debt, and approached insolvency. The second phase starts with April 6, 1942. Only after that date could appellants commence this action. It is important to note that throughout this second phase Styer was insolvent and that the entire scope of his activities consisted in arranging for the sale of his business in order to avoid loss of everything he had put into it. He had to sell. He arranged to sell. Delay, if any, in the commencement of this action did not prevent the sale or affect its terms in any respect. He cannot point to the least item of prejudice by reason of appellants' alleged slowness in bringing the action, because after April 6, 1942, he accomplished everything he wanted to accomplish despite the alleged slowness.

that of a regular-route operation with only occasional or sporadic trips to off-route points or points in irregular-route territory. We conclude that upon the evidence we are not warranted in granting applicant authority to transport either general or specific commodities over irregular routes under the 'grandfather' clause of the act." (R. 12.)

It is submitted that the Commission was clearly in error in granting regular route eastbound "grandfather" authority to serve the intermediate Minnesota points in the face of the undisputed evidence (a) that Styer's "grandfather" operation eastbound had been over irregular routes without any service to such intermediate Minnesota points, and (b) that *after* June 1, 1935, that irregular route operation had *evolved* into a regular route operation. No clearer case could exist for application of the principle expressed in *United States v. Maher*, 307 U. S. 148. In that case a motor carrier had been engaged in irregular route operations on and prior to June 1, 1935, but after that date discontinued them and instituted a regular route operation. In his "grandfather" application he requested regular route authority. The Commission denied any authority because: (1) the regular route operation was not in existence on June 1, 1935; and (2) the irregular route operation had been abandoned after June 1, 1935, that is, had not been "so operated since that time" as required by Section 206(a). The Court said in part:

(p. 151) "The Interstate Commerce Commission, Division 5, on October 27, 1937, found the facts to be as follows: From 1931 until May 29, 1936, the appellee had engaged in bona fide 'anywhere-for-hire' operations in Oregon with occasional entries into Washington. There were rare trips to Seattle, no service at all to most of the intervening points, and no showing that passengers were transported on return trips to Portland. On May 29, 1936, the appellee began his regular-route service between Portland and Seattle

The First Phase.

Styer's operation commenced April 1, 1935, and the report of the Commission, by Division 5, was filed October 24, 1941; and during this period he operated his business without any indication from any official source that he would be permitted to continue to do so except for the limited "grandfather" authority granted him by the Joint Board which heard his "grandfather" application, and to which he took exception. (R. 2.) The Joint Board hearing his public convenience and necessity application had denied it in its entirety. (R. 3.) Notwithstanding, during this period he invested money and effort, increasing his motor truck equipment from two straight trucks on April 1, 1935, to four trucks, five tractors and five semi-trailers on December 12, 1938, the date the hearings began before the Joint Boards. (R. 90; Styer's Exhibit No. 22, R. 182.) After December 12, 1938, Styer continued to add equipment each year. Exhibit "A" (a copy of the "Agreement of Lease" between Styer and Glendenning) lists as the motor vehicle equipment owned by Styer on September 22, 1942, ten tractors, thirteen trailers, nine trucks, and two passenger automobiles, with a depreciated book value of \$41,894.73. These are of year models ranging from 1935 to and including 1941. (R. 46.)

On October 24, 1941, the report and order of the Interstate Commerce Commission, Division 5, was filed. Appellants seasonably filed with the Commission a petition for reconsideration. Between October 24, 1941, and April 6, 1942, when appellants' petition was denied, Styer continued to expand his business, as he had been doing for 6 years and 7 months prior to that date, regardless of the filing of the appellants' petition for reconsideration. Between October 24, 1941, and April 6, 1942, Styer expended \$1,600 in the purchase of certain operating rights to con-

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which he conducted regularly since that time. But upon the institution of the regular-route service between Portland and Seattle the appellee discontinued the 'anywhere-for-hire' operations theretofore conducted."

(pp. 155-156) "In differentiating between operations over the 'route or routes' for which an application under the 'grandfather clause' is made as against operations 'within the territory,' Congress plainly adopted the familiar distinction between 'anywhere-for-hire' bus operations over irregular routes and regular route bus operations between fixed termini. Such recognition is implicit also in the provision of Sec. 208 (a), 49 U. S. C. A. Sec. 308 (a) that 'Any certificate issued under Sec. 206 or 207 shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate.' Since the new regular route of appellee was not in existence on June 1, 1935, and the irregular 'anywhere-for-hire' service was not 'so operated,' as required by Sec. 206, when the Commission passed upon the application for a 'grandfather' certificate, the Commission rightly rejected the application."

In *Crescent Express Lines, Inc. v. United States*, *supra* (88 L. Ed. adv. 143), where the Court held that operation of six-passenger automobiles for hire during the "grandfather" period did not warrant the granting of "grandfather" rights to operate passenger buses, the Court said:

"Consequently we held in *United States v. Maher*, 307 U. S. 148, that operations over irregular routes did not provide the requisite continuity to support an application for regular service between fixed termini, even when the highway between the fixed termini had been occasionally used for part of the distance in the irregular route operations."

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STATUTES CITED.

Interstate Commerce Act, Sec. 1, 49 U. S. C. A. 1, (18), (19), (20)	2, 3
Interstate Commerce Act, 49 U. S. C. A. Secs. 3 (2) and (3); 16 (3) (a), (b), (c), (d), (e), (f), and (h); 19a (h); 20 (11); 308 (f) and 318.....	11

nect up his existing system with Sioux City, Iowa. (R. 70-71.)

The Second Phase.

Between April 6, 1942, and the commencement of this action on October 30, 1942, Styer's activities were devoted to saving his business from financial collapse and negotiating for the lease and sale of it to Glendenning. There was no further expansion. He borrowed \$6,000 from his brother on May 25, 1942, and negotiated for the Glendenning deal, but this loan and such negotiations were prompted solely by the fact that he was in the utmost financial straits and were not due to appellants' failure to seek review of the Commission's order. He was not able to obtain financing for his business and faced the loss of it unless he could sell either to Glendenning or someone else. (R. 72-73.) Styer concedes that unless he could sell advantageously he would lose all the value in his business; secured creditors were about to seize his irreplaceable motor vehicle equipment and this would cause loss of his operating rights. (R. 73-74.) The \$6,000 loan was made on May 25, 1942. If this action had been commenced on May 26, 1942, it would not have prevented the making of this loan; and assuredly it could not be claimed that there would be laches in starting the suit on that date.

So far as Styer is concerned the filing of the suit made no difference with respect to his negotiations with Glendenning. Despite the fact that both Styer and Glendenning knew of the filing of the suit on the morning of the hearing before the Interstate Commerce Commission on the application for approval of the lease and sale, both proceeded to do all things necessary to effectuate their negotiations. (R. 74-75, 77.) If appellants had commenced this suit, say in May of 1942, Styer either would or would not have his present contract with Glendenning. If he did not have such a con-

II.

IN THE PUBLIC CONVENIENCE AND NECESSITY CASE, AUTHORITY SHOULD NOT HAVE BEEN GRANTED TO SERVE ANY POINTS IN MINNESOTA EXCEPT ST. PAUL-MINNEAPOLIS.

The Commission, in No. MC-47644 (Sub. 1), the public convenience and necessity proceeding, authorized Styer to serve in both directions all points in Minnesota on the highways represented by the double black line on the map inside the back cover page of this brief. It is submitted that this was error and that service on these routes in Minnesota should have been limited to the Twin Cities for the following reasons:

(1) Styer filed a written amendment to his application in this proceeding, before the hearing, by which he withdrew from his original application his request for authority to serve various points including:

"3. All service in interstate commerce between points in Minnesota (R. 195-196)."

This amendment was accepted by the Joint Board (R. 190), and the application remained in that form at the time of the hearing and at the time the Commission's order was issued.

(2) Styer offered no evidence showing public convenience and necessity for service to or from any point in Minnesota except St. Paul-Minneapolis.

We submit that the Commission had no power to grant this authority specifically withdrawn from the application. Section 206 (a) of Part II of the Interstate Commerce Act, 49 U. S. C. A. 306 (a), previously referred to, authorizes the granting of "grandfather" certificates in appropriate cases, and provides that in the event a "grandfather" certificate is not warranted:

"Otherwise the application for such certificate should be decided in accordance with the procedure

Interstate Commerce Act, Sec. 204, Part II, 49 U. S.	
C. A. 304	17
Interstate Commerce Act, Sec. 208, Part II, 49 U. S. C.	
A. 308	15, 16
Interstate Commerce Act, Sec. 212 of Part II, 49 U. S.	
C. A. 312	3
Rayburn Bill, H. R. 6836, 73rd Cong., 2d sess.....	16
Second War Powers Act, 1942 (Act of March 27, 1942, ch. 199, title I, sec. 101, 56 Stat. 176)	17

MISCELLANEOUS.

Report of Federal Coordinator of Transportation, S.	
Doc. 152, 73rd Cong., 2d sess., p. 47.....	15
79 Cong. Rec. 5654	16

tract he would be worse off than he is now. Whether the suit had been commenced in May or October, the important thing to Styer now is his contract with Glendenning, and his position as to that was not changed in any respect by reason of the suit not being brought until October.

EVIDENCE AS TO GLENDENNING.

Glendenning claims that he so changed his position between April 6, 1942, and October 30, 1942, as to give rise to the principle of laches in his favor. A brief consideration of the facts makes it evident that his claim is not sound.

On September 22, 1942, Glendenning entered into a contract with Styer for the lease and later for the purchase of Styer's rights. On October 31, 1942, the day set for the hearing before the Examiner on the proposed transfer from Styer to Glendenning, Glendenning knew that this suit had been brought, but nevertheless he went ahead with the proceedings before the Interstate Commerce Commission looking to the confirmation and approval of his sale with Styer. (R. 74-75, 77, 79-89.)

Glendenning's contracts with Styer, and the proceedings before the Commission which have resulted in their approval, are of course all based on the legal existence of the subject matter of such contracts. If in this suit Styer's rights are impaired or destroyed Glendenning's contracts with Styer are subject to rescission in whole or in part at Glendenning's option. *Allen v. Hammond*, 11 Peters (U. S.) 63; *United States v. Golden*, 34 F. (2d) 367 (10th C. C. A.); *United States v. Charles*, 74 F. 142 (8th C. C. A.)

Glendenning testified that he had spent \$11,791.85 for tires and repairs for Styer's motor vehicle equipment. It is significant that \$2,873 of this amount was spent between

provided for in section 207 (a) of this part and such certificate shall be issued or denied accordingly."

Section 207 (a) provides:

"* * * a certificate shall be issued to any qualified applicant therefor, authorizing the *whole or any part of the operations covered by the application*, if it is found that the applicant is fit, *willing*, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied."

The Commission is permitted by the act to authorize "*the whole or any part of the operations covered by the application.*" Contrary to that provision the Commission authorized operations not only not covered by the application but affirmatively withdrawn and disclaimed by the amendment.

By this amendment Styer asserted that he was not *willing* to perform the service withdrawn by the amendment. Under Section 207 (a) the Commission lacked power to issue an order providing for such unwilling service. Willingness must be determined by the record at the time of the hearing.

The decisions cited above, pp. 12-13, 19-20, are applicable here.

Styer and fourteen witnesses for him testified in the public convenience and necessity proceeding. (R. 190-195.) All testified solely as to the need for Styer's service between the Twin Cities on the one hand, and South Dakota points on the other hand. Of course, nothing else was to be expected in view of the amendment to the application, and his statement therein: "*the purpose of the proposed amendment is simply to conform the application to the proof that will be offered.*" (R. 197.)

October 20 and 31, 1942; that is, even prior to the hearing before the Examiner on Glendenning's application to purchase. The remainder of it was spent after Glendenning knew of this suit. (R. 77.) Consequently it is apparent that before his application for purchase was heard he was willing to take whatever chance there was in spending the \$2,873, and after he learned, on October 31, 1942, of the filing of this suit, he was willing to take whatever chance there was in spending \$8,918 more. The tire and repair expense was upon 10 trucks, 10 tractors, and 9 trailers, all equipment as to which, we think the Court can take judicial notice, a great scarcity exists and the present demand greatly exceeds the supply. Vehicles now being used are, in fact, irreplaceable. (R. 74.) It is a fair conclusion that Glendenning's willingness to spend \$8,918 to repair this equipment after learning of this suit shows that he would not have been deterred from spending the entire amounts he laid out had he known, before he spent anything, that this suit was to be filed. The \$8,918 was spent during a period of four months after the suit was filed. (R. 77.)

We submit that the evidence, much of it furnished by Styer and Glendenning, conclusively shows that the filing of this suit on October 30, 1942, and not earlier, did not affect any of the activities of Styer and Glendenning before that date. Styer did what he had to do to keep his business alive and available for sale to Glendenning; if he had not taken such steps he would have lost his business and his operating rights, and any delay in filing the suit did not affect that situation or prejudice his prospects of sale. Glendenning's interest lay in consummation of the sale to such an extent that he spent \$8,918 in furtherance of it after he knew of commencement of this suit.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1943.

No. 482.

**CHICAGO, SAINT PAUL, MINNEAPOLIS & OMAHA
RAILWAY COMPANY, ET AL.,**

Appellants,

vs.

**UNITED STATES OF AMERICA; INTERSTATE
COMMERCE COMMISSION; CORNELIUS W.
STYER, DOING BUSINESS AS NORTHERN TRANSPOR-
TATION COMPANY; AND GLENDENNING MOTOR-
WAYS, INC.,**

Appellees.

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MINNESOTA.**

APPELLANTS' REPLY BRIEF.

Separate briefs have been filed by appellees Styer, Glendenning Motorways, Inc., and United States and Interstate Commerce Commission. Our reply brief is in two main divisions. In the first division we answer the arguments on laches in the Styer and Glendenning briefs. In the second we reply to the arguments of all appellees respecting the merits of the case.

THE APPLICABLE PRINCIPLES OF LAW.

In authorizing suits like this Congress did not fix any period of limitation. This is significant, since practically every other kind of action that can be brought in either Federal or State courts is subject to some limitation as to time of commencement. It is obvious that the omission to fix a limitation period for the bringing of this type of suit was not an oversight, as in statutes passed before and after enactment of the statute under which this action is brought Congress has fixed limitation periods for various other types of suits which may be maintained under the Interstate Commerce Act. See 49 U. S. C. A. Sections 3 (2) and (3); 16 (3) (a), (b), (c), (d), (e), (f), and (h); 19a (h); 20 (11); 308 (f); and 318.

Furthermore, it is the established rule, an obvious one, that where the legislature has omitted to fix a period of limitation, such omission is presumed to be intentional and no statute of limitation can be applied by the courts by analogy to existing statutes or otherwise. *Kirkman v. Hamilton*, 6 Peters (U. S.) 20, 23; *Bedell v. Janney*, 9 Ill. 193, 207-210; *Baker v. Kelley*, 11 Minn. 480, 492.

We have been able to find only two decisions which have considered the question of laches in connection with suits of the instant character, and in both of them the plea of laches was denied.

In *The Chicago Junction Case*, 264 U. S. 258, the Interstate Commerce Commission, after hearing, and by order dated May 16, 1922, authorized New York Central Railroad to acquire the capital stock of a belt line railroad serving the Chicago switching district and authorized that belt line railroad to lease another belt line railroad. The effect was to give control of these two switching railroads to the New York Central, despite the fact that they pro-

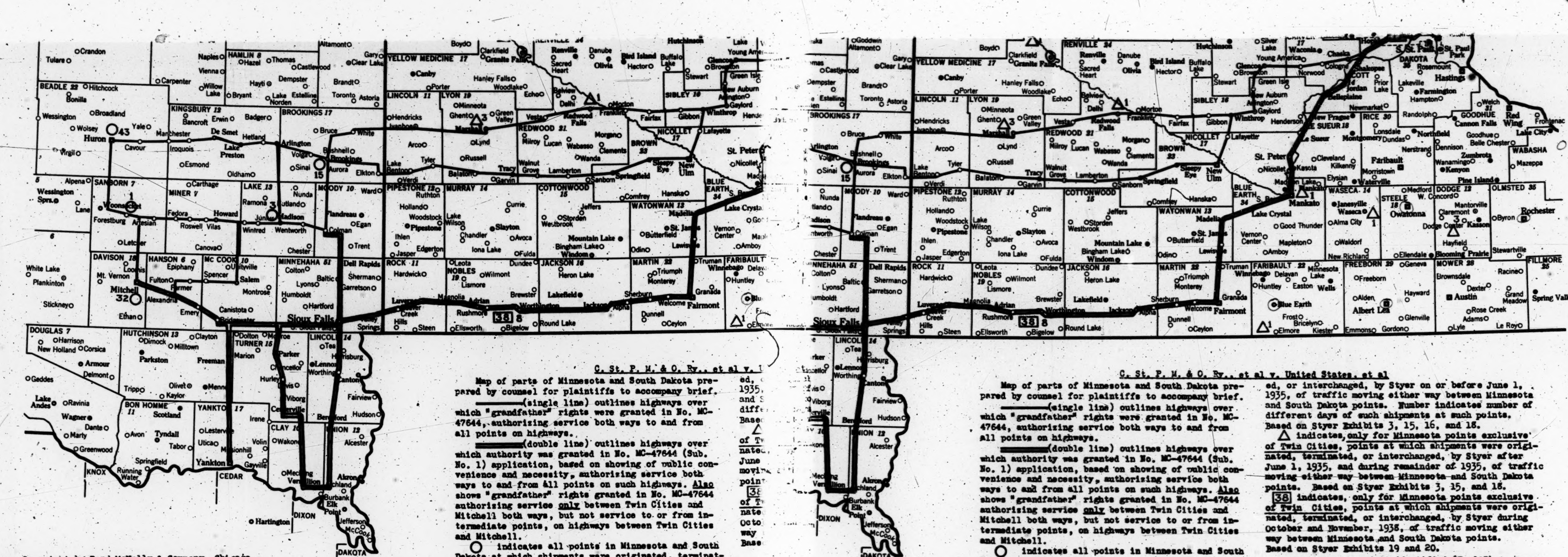
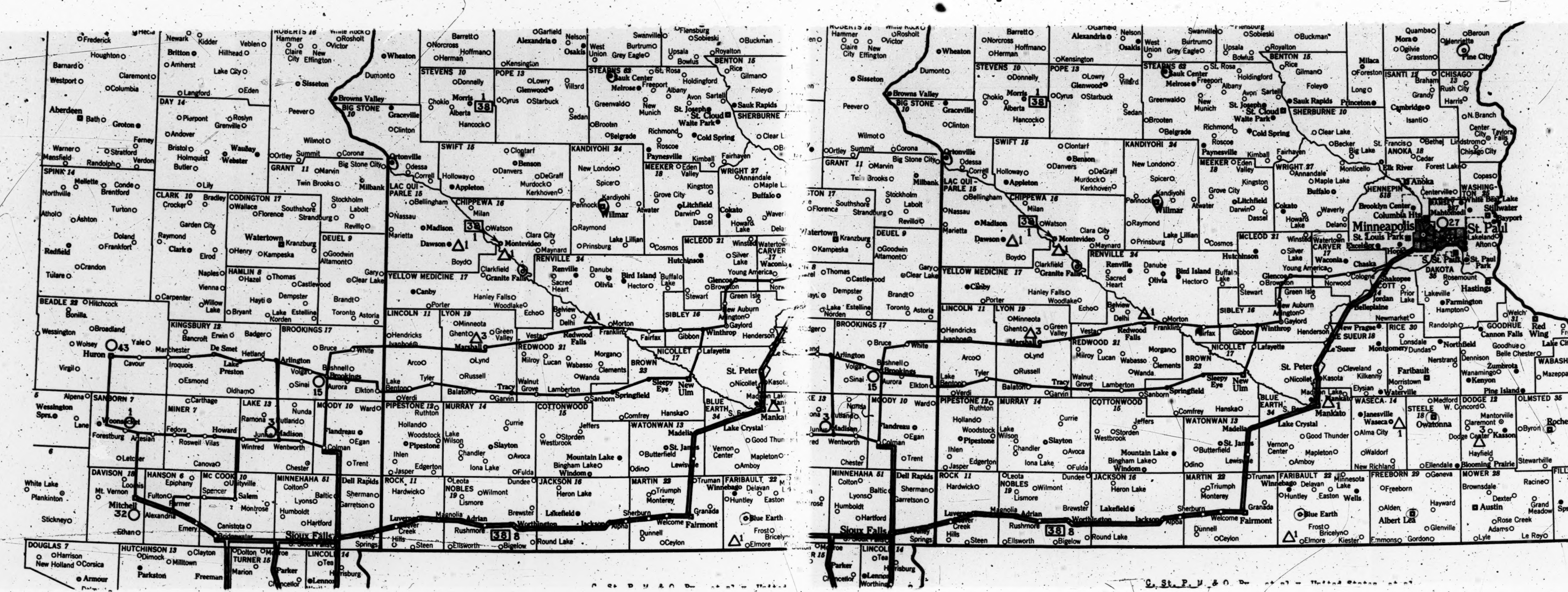
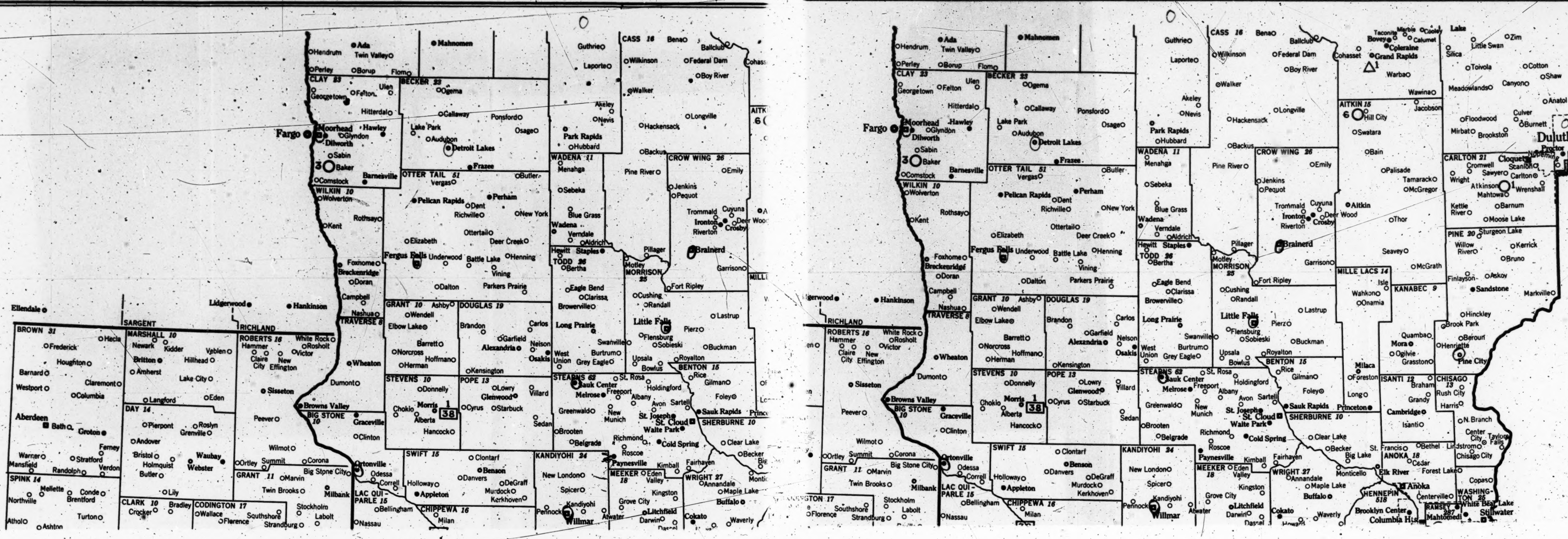
For the above reasons, which are briefly summarized at pages 8-9 hereof, the Commission's order should be annulled to the extent pointed out herein.

Respectfully submitted,

WARREN NEWCOME,

AMOS MATHEWS,

Attorneys for Appellants.



Map of parts of Minnesota and South Dakota prepared by counsel for plaintiffs to accompany brief which "grandfather" rights were granted in No. MC-47644, authorizing service both ways to and from all points on highways.

(double line) outlines highways over which authority was granted in No. MC-47644 (Sub. No. 1) application, based on showing of public convenience and necessity, authorizing service both ways to and from all points on such highways. Also shows "grandfather" rights granted in No. MC-47644 authorizing service only between Twin Cities and Mitchell both ways, but not service to or from intermediate points, on highways between Twin Cities and Mitchell.

indicates all points in Minnesota and South Dakota at which shipments were originated, terminat-

Map of parts of Minnesota and South Dakota prepared by counsel for plaintiffs to accompany brief which authority was granted in No. MC-47644 (Sub. No. 1) application, based on showing of public convenience and necessity, authorizing service both ways to and from all points on such highways. Also shows "grandfather" rights granted in No. MC-47644 authorizing service only between Twin Cities and Mitchell both ways, but not service to or from intermediate points, on highways between Twin Cities and Mitchell.

indicates all points in Minnesota and South Dakota at which shipments were originated, terminat-

ed, or interchanged, by Styer on or before June 1, 1935, of traffic moving either way between Minnesota and South Dakota points. Number indicates number of different days of such shipments at such points. Based on Styer Exhibits 3, 15, 16, and 18.

indicates, only for Minnesota points exclusive of Twin Cities, points at which shipments were originated, terminated, or interchanged, by Styer during October and November, 1938, of traffic moving either way between Minnesota and South Dakota points. Based on Styer Exhibits 19 and 20.

indicates points identified (R. 105) in Styer testimony and not otherwise referred to in evidence.

vided the only access for other railroads to many points in the Chicago switching district. On June 12, 1922, the petition for reconsideration of certain objecting railroads was denied. Immediately thereafter New York Central purchased the stock of the one railroad for \$750,000 and caused such railroad to lease the second railroad at an annual rental of \$2,000,000. On April 10, 1923, ten months after denial of the petition for reconsideration, the objecting railroads sued in Federal Court in Chicago to set aside the Commission's order, and were successful. With respect to the defendants' plea of laches the Court stated (264 U. S. p. 270):

"The contention that the suit is barred by laches is clearly unsound. The situation of none of the defendants appears to have been affected by the brief lapse of time."

The second case is *Texas and Pacific Railway Co. v. Gulf, Colorado & Santa Fe Railway Co.*, 270 U. S. 266. While that suit was brought under the statutory authority involved here (see 315 U. S. 15) it was not one to set aside an order of the Commission but was brought to restrain alleged unauthorized construction of a railroad. The District Court granted injunction, the Circuit Court of Appeals reversed, and this Court sustained the District Court's judgment, saying:

"The Santa Fe contends that the judgment denying relief was proper also because the Texas & Pacific had been guilty of laches. This defense was not passed upon by the Court of Appeals. The District Court overruled it as unsupported in fact, and also on the ground that a plaintiff suing under paragraph 20 represents the public as well as private interests and that, hence, a plaintiff's laches cannot operate as a bar. We need not determine whether the latter ground is sound; for the facts do not warrant a finding of laches."

I.

THE ACTION IS NOT BARRED BY LACHES.

1.

THE COURT HAS POWER TO ANNUL A MOTOR CARRIER
CERTIFICATE.

Appellee Glendenning Motorways, Inc., argues that when the Commission issued the certificate of public convenience and necessity to Styer on July 11, 1942, (R. 19) Styer's rights became fixed to the extent that thereafter no action could be brought in court to annul the Commission's order or certificate. It is perfectly clear that this contention has no merit.

It is well settled that action lies to annul a certificate to construct a railroad issued under the provisions of paragraphs (18), (19), and (20) of Section 1 of the Interstate Commerce Act, 49 U. S. C. A. 1, (18), (19), (20). In *Claiborne-Annapolis Ferry Co. v. United States*, 285 U. S. 382, the Court said, referring to these provisions (p. 392):

"The inhibition applies where there is no certificate in fact, or where the Commission lacked power to grant the outstanding one because of insufficient evidence or other reason. *An invalid certificate would leave the situation as though none had issued.*" (Emphasis supplied.)

In *Alton Railroad Co. v. United States*, 315 U. S. 15, the Court said in holding the railroad parties in interest entitled to maintain the action (p. 19):

"They rest their right to sue on Sec. 205 (h) of the Motor Carrier Act (49 USCA Sec. 305 (h)) which provides that 'Any final order made under this part shall be subject to the same right of relief in court by any party in interest as is now provided in respect to orders of the Commission made under part I. * * *'

In that case there was a dispute as to the facts. The road attempting to build the line claimed that the protesting line had stood by while they were making preparations, while the protesting line claimed it acted as soon as it received knowledge.

We call attention to the fact that in *Chicago Junction case, supra*, the Court characterized the ten months between final action of the Commission and the bringing of the suit as a "brief lapse of time"; and declined to sustain the defense of laches even though, based on the delay, New York Central had consummated a stock purchase of \$750,000 and entered into a lease calling for the payment of two million dollars per year.

Under the facts, we submit that the only two expressions of this Court on this question make it evident that there was no laches on the part of the appellants in the instant case.

In the Federal cases cited by appellees Styer and Glendenning the lapse of time relied upon varied from five years in *Gallihier v. Cadwell*, 145 U. S. 368, and *Penn Mutual Life Insurance Co. v. Austin*, 168 U. S. 685, to nine years in *Alsop v. Riker*, 155 U. S. 448. In all of the cases cited by appellees the familiar point is heavily stressed that delay alone does not constitute laches but that there must be unreasonable delay coupled with a change of position caused by the delay; and it was the fact that the party charged with laches stood idly by with notice and knowledge that the other party was changing his position in reliance on conduct indicating acquiescence in the adverse claim and abandonment of the right to contest it.

Here both Styer and Glendenning were bound to know that the appellants, protestants through the proceedings before the Commission, were given the unquestioned right to sue to set aside the Commission's order. Appellants

Section 1 (20) of Part I (49 USCA Sec. 1 (20)) authorizes 'any party in interest' to sue to enjoin any construction, operation or abandonment of a railroad made contrary to Sec. 1 (18) or (19). Such suits may be maintained not only where the railroad proceeds without authorization of the Commission but also where it proceeds under a certificate of the Commission whose validity is challenged. *Claiborne-Annapolis Ferry Co. v. United States*, 285 U. S. 382. Hence we conclude that Sec. 205 (h) has incorporated by reference the 'party in interest' provision of Sec. 1 (20)."

Appellee apparently tries to differentiate between the sections of the Act in Part I dealing with railroad certificates and the sections in Part II that relate to motor carrier certificates, but appellee's argument is not sound. Appellee claims that Section 212 of Part II, 49 U. S. C. A. 312, because it contains specific provisions for the revocation of certificates, provides the exclusive remedy in that regard and removes certificates from the reach of the provisions of the Act authorizing suits to set aside orders of the Commission. There are several difficulties with appellee's theory. In the first place, a comparison of the aforesaid provisions of Parts I and II of the Act does not support appellee. Paragraphs (18), (19), and (20), of Section 1 provide that no railroad can be constructed, extended, operated, or *abandoned*, except under the authority of a certificate issued by the Commission. In those respects these provisions are identical with the provisions relating to motor carrier certificates in Section 212. However, the Court holds, as pointed out above, that action may be had to set aside a certificate.

The obvious point, of course, is that the provisions in Parts I and II relating to Commission procedure with respect to certificates, were not intended to deprive the courts of the power to review Commission action under Parts I and II, as described in *Claiborne-Annapolis Ferry Co. v.*

did nothing to mislead them respecting review of the Commission's order and they made no effort to ascertain appellants' intentions in that regard. Appellants had no notice of the negotiations or sale until after the filing of the application for approval. The fact that the suit was brought on October 30, 1942, has in no way affected Styer's rights or benefits he hopes to gain from his contracts with Glendenning. If appellants prevail in this suit Styer is no worse off with respect to the Glendenning contract than if the suit had been started on April 7, 1942. As far as Glendenning is concerned, if plaintiffs prevail he has the right to rescission of his contract with Styer. And after Styer and Glendenning both learned, on October 31, 1942, of the commencement of this suit, they both went ahead to effectuate their plans for sale as if nothing had happened. The sale was the important thing to both of them, absolutely necessary to Styer and important enough to Glendenning that he spent \$8,918 to repair Styer's equipment after he learned of the suit. It is apparent that they would have done just the same regardless of the time when this suit was filed.

II.

REPLY ON THE MERITS.

We do not here attempt to reargue the points stated in our first brief. We only call attention here to certain of appellees' erroneous claims as to what the evidence shows.

THE STIPULATION AND AMENDMENT.

The Styer and Government briefs devote much space to arguing that stipulations fairly and honestly entered into between the parties most concerned can be totally disregarded. To us this seems amazingly strange doctrine.

United States, supra, and *Alton Railroad Co. v. United States, supra*. In both parts of the Act review of Commission action by the courts is provided by the same legislative enactments that define the Commission's power.

There is an evident practical reason why the Commission's action can still be reviewed in court after a certificate has issued. No period of time is specified either by statute or rule within which a certificate is to be issued after a Commission order has been filed. According to appellee's theory, if on the same day the Commission filed an order, it also issued a certificate, or if it waited to issue a certificate until the same day it denied a petition for reconsideration, it could effectively block any court test of its orders involving certificate matters.

We have replied to appellee's argument in its own terms without stating perhaps the plainest defect in it. After all, a certificate is no more than evidence of the terms of an order, and rises no higher. The essential thing is the determination of the Commission of the matter before it, that is, the order; and there can be no doubt as to the power of the courts to review it.

2.

THE ESSENTIAL ELEMENTS OF LACHES ARE LACKING.

The complete answer to appellees' contentions as to laches is that the necessary elements of such defense are lacking.

Delay alone is not sufficient to make available the defense of laches; in addition to unreasonable delay the conduct of the appellants must have been such as to warrant the conclusion that they acquiesced in the erroneous decision of the Commission and intended to abandon their right to seek review of the same, *and in addition it must appear that in reliance on such conduct appellees substantially and*

Its enormous inconvenience as a practical matter should be evident to every practitioner before the Commission, as well as the Commission itself, as pointed out in the last paragraph of page 13 of our first brief.

The excuse given for flouting the given word of counsel and party is that "there was public need for the service." It is contended that the Commission is empowered by the act to authorize service to the intermediate points on both the "grandfather" and public convenience and necessity routes because "there was a public need for the service." This contention is particularly emphasized in the outline of "questions presented" on pages 2 and 3 of the Government brief.

Assuming for purpose of argument that the Commission might have such power if "there was a public need for the service," the basic factual fallacy in that argument is that the record is utterly silent as to any "public need for the service." There is not a shred of evidence to sustain such a finding. Appellees have not attempted to point to such evidence, for the reason of course that it does not exist.

LEGISLATIVE HISTORY OF SECTION 208.

On pages 26 and 27 of the Government brief, legislative history is cited in an attempt to sustain the Government's theory that irrespective of the desires of an applicant for "grandfather" authority, the Commission can compel such applicant to serve territory not applied for by him when there is public need for such service.

It is submitted that the legislative history recited proves just the contrary of the Government's theory and supports the argument on pages 21 to 23 of our first brief. The Government sets out a quotation from the report of the Federal Coordinator of Transportation, S. Doc. 152, 73rd.

prejudicially changed their position. Townsend v. Vanderwerker, 160 U. S. 171, 186; *Merrill National Bank v. Jacksonville*, 173 U. S. 131, 135; *Northern Pacific Railway Co. v. Boyd*, 228 U. S. 482, 510; *Southern Pacific Co. v. Bogert*, 250 U. S. 483, 488, 489.

The earliest that appellants could have started this suit was April 6, 1942, the date of the denial of the petition for reconsideration. Between that date and the time Styer and Glendenning entered into the lease and sale contract, September 22, 1942, approximately five and one-half months elapsed. The negotiations for the lease and sale were started immediately after the issuance of the certificate of public convenience and necessity, July 11, 1942. The suit was started October 31, 1942. Clearly, waiting this short period of time before starting suit cannot be considered an unreasonable delay, nor were appellees justified in concluding therefrom that appellants acquiesced in the order and intended to abandon their right to seek review of it. Appellants did nothing to mislead appellees or to indicate such acquiescence or abandonment. Inquiry of appellants, who were protestants before the Commission and three of whom had their main offices in the Twin Cities, would have disclosed to appellees that appellants did not intend to acquiesce in the order nor to abandon their right of review. Appellees elected not to make such inquiry but rather to rely solely on the short lapse of time as indicative of acquiescence and abandonment. Standing alone the failure to make this inquiry is sufficient to deprive appellees of the right to claim laches.

But the essence of laches is not merely lapse of time. It is essential that there be also acquiescence in the alleged wrong or lack of diligence in seeking a remedy. *Southern Pacific Co. v. Bogert*, 250 U. S. 483, 488, 489. "Laches is usually not mere delay, but standing by watching one change his position or delay for such length of time that it

Cong., 2d. sess., p. 47, one sentence of which we here repeat:

"There is added to Section 6 of the Rayburn Bill a provision which authorizes the Commission to *require* service to intermediate and off-route points." (Emphasis supplied.)

For the Court's convenience we set out below Section 6 of the Rayburn Bill, H. R. 6836, 73rd Cong., 2d. sess.¹ A comparison of Section 6 of the Rayburn Bill with Section 208 of Part II of the Interstate Commerce Act, 49 U. S. C. A. 308, discloses that the language calculated to "require service" in Section 6 of the Rayburn Bill was not included in the Act as finally passed. The reason for elimination of the words "*the furnishing of additional service over the specified routes, between the specified termini, or within the specified territory, and*" was stated by Senator Wheeler on the floor of the Senate. 79 Cong. Rec. 5654. He said that this clause was objected to because it would require the authorization from the Commission for every increase in the facilities of a motor carrier, and that to take care of such objections the proviso at the end of subparagraph (a) of Section 208 had been added.

It will thus be seen that whatever intention there may have been to incorporate in legislation regulating motor carriers a provision to *require* motor carriers to render service, in the sense contended for by the Government, such provision was not included in the Act as passed.

1. Sec. 6. (a) Any certificate of public convenience and necessity issued under section 5 shall specify the routes over which, the fixed terminal, if any, between which, and, in case of operations not over specified routes or between fixed terminal, the territory within which, and the service which the motor carrier is authorized to operate; and there shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms and conditions as the public convenience and necessity may from time to time require, including terms and conditions as to the furnishing of additional service over the specified routes, between the specified termini, or within the specified territory, and the extension of the line or lines of the carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the commission under section 2 (a) (1) and (3).

The fallacy of the Government's theory is further illustrated by the enactment of Section 101 of the Second War Powers Act, 1942 (Act of March 27, 1942, ch. 199, title I, sec. 101, 56 Stat. 176). Section 101 amended Section 204 of the Interstate Commerce Act, 49 U. S. C. A. 304, by adding after subsection (d) thereof a new subsection (e) giving to the Commission the same power with respect to motor carriers as it has with respect to other carriers under Section 1 (15) of Part I of the Interstate Commerce Act. Section 1 (15) grants authority to the Commission to compel railroads to render service, and it was considered by the Commission and by Congress that no such authority with respect to motor carriers existed, and that therefore special legislation of that character was necessary. Section 101 also added to Section 204 a new subparagraph (f) giving the Commission emergency authority over motor carrier certificates, which had not theretofore existed.

THERE WAS NO HOLDING OUT TO SERVE INTERMEDIATE
MINNESOTA POINTS.

In pages 10 to 16 of Styer's brief he attempts to show (1) that during the "grandfather" period he was serving or holding out to serve the intermediate Minnesota points, and (2) that when he referred in his testimony to the "intermediate points" he was referring to intermediate points in Minnesota as well as in South Dakota.

It appears from Styer's own evidence (R. 127-129, 132) that during the "grandfather" period Styer did not pick up or deliver any freight at any of the intermediate Minnesota points. Styer, however, attempts to bolster this lack of actual service by a claim of "holding out" and "solicitation" with respect to the intermediate points. To that end, in pages 11 to 16 of his brief, Styer quotes various scattered sentences from the record in an attempt to show

that when he said "intermediate points" he meant Minnesota as well as South Dakota intermediate points.

We submit that it is perfectly clear from the record that when Styer said he was holding out service to the "intermediate points" he was referring only to South Dakota points. Instead of following appellee's example of taking isolated excerpts from the record to establish our contention, we believe it will save time and space if we set out, for the Court's convenience, the complete record on this point. We called attention, in our first brief, pages 14-18, to the District Court's and the Commission's findings with respect to this. And on page 18 we referred the Court to several complete pages of the record consisting of Styer's testimony. We now set out this testimony in full (R. 92-94):

"On and prior to June 1, 1935, I solicited business for intermediate points on the regular routes I operated over. I contacted personally quite a few shippers. They were located principally in the Twin Cities because that was the location of our main office, and also because the time being limited between the time I started and June 1, that I have not had an opportunity to go out into the field a great deal myself. I instructed National Truck Terminal, with whom we were associated at the beginning of my business, to have their solicitors solicit business for a list of towns and to have their drivers accept shipments to those towns for Northern Transportation Co. This concern was and still is independent and handles pickup, delivery and soliciting for various truck firms. Also they have dock space available for use of carriers. We had an office in the National Truck Terminal building (p. 42-45). We used the dock and those terminal facilities at the commencement of our operations on June 1, 1935. This concern had solicitors and also men from their office and also their pickup drivers who solicited for the carriers using that service. Exhibit 5² is a copy of a list

2. R. 134. This is a schedule of transportation rates between the Twin Cities and South Dakota points only.

of towns and rates used by J. W. Crabb for service into South Dakota prior to my starting as a proprietor in the trucking business. This is the same Crabb I had worked for previously and he did business as North West Transportation Co. He had his terminal facilities in the Twin Cities at the National Truck Terminal, and Exhibit 5 was prepared in its present form by that company. On April 1, 1935, Crabb was not in business. The list of towns which I instructed the National Truck Terminal to solicit business on my account is on Exhibit 5. Also I asked them to quote the rates there shown to the points indicated (pp. 46, 47, 48).

"It was my purpose from the beginning to solicit and render service to the intermediate points. What I attempted to do was to get a truck service comparable to that that Crabb had been giving. It was a daily service to a number of points in South Dakota; to any of the points along the routes. We accepted any freight we were able to get from the time we started. We solicited freight for all points along the route. Because of various contacts at some of these towns we got much more freight there. I (fol. 125) was born at Huron and was well acquainted there and consequently Huron developed faster than some of the other points, but at no time did we turn down freight for any of these points along the routes in South Dakota. I am referring to the towns shown by Exhibit 5 (pp. 53, 54). Between April 1 and June 1, 1935, my facilities were such as to permit carrying shipments to the intermediate points not covered by Exhibit 3. There was actual space on my trucks which would have allowed me to accept, carry and deliver shipments to these intermediate points had I received any during the period prior to June 1, 1935 (p. 54). Never at any time did I intend or offer to the public simply a non-stop operation between the Twin Cities and Huron prior to June 1, 1935 (pp. 54, 55).

"I have personal recollection of having solicited particular shippers prior to June 1 for shipments from the Twin Cities to South Dakota points located on or near the routes described in this case."

STYER'S EASTBOUND OPERATION WAS OVER IRREGULAR ROUTES.

On page 23 of his brief Styer argues that his eastbound operation during the "grandfather" period consisted of both an irregular route operation to scattered points in Minnesota and also a regular route operation. Styer's own testimony is that during the "grandfather" period, he was transporting commodities from South Dakota points over irregular routes to 26 or 27 widely scattered Minnesota points, none of which, except Minneapolis and St. Paul, were on the "regular routes." (R. 105.) During this period he owned two straight trucks, and two tractors and two semitrailers; that is, four units of motor vehicle equipment. (R. 90.) It is perfectly obvious that during the "grandfather" period he could not have served all of these points, scattered as they are over several hundred miles from the southern to the northern part of Minnesota, and still have operated regularly over any regular route. That is why the Commission and the District Court found that during the "grandfather" period Styer's eastbound operation was an irregular route operation (R. 12, 60) and the Commission found that subsequent to the "grandfather" period his irregular route operation had "evolved" into that of a regulate route operation. (R. 12.)

Respectfully submitted,

WARREN NEWCOME,

AMOS MATHEWS,

Attorneys for Appellants.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 482

**CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAIL-
WAY COMPANY, ET AL.,**

Appellants,

vs.

**THE UNITED STATES OF AMERICA, INTERSTATE
COMMERCE COMMISSION, ET AL.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF MINNESOTA.**

**MOTION TO DISMISS OR AFFIRM BY CORNELIUS
W. STYER.**

PERRY R. MOORE,

✓ **FREDERICK H. STINCHFIELD,**

Counsel for Appellee,

Cornelius W. Styer.

STINCHFIELD, MACKALL,

CROUNSE & MOORE,

Of Counsel.



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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Civil Action No. 811.

CHICAGO, SAINT PAUL, MINNEAPOLIS AND
OMAHA RAILWAY COMPANY, ET AL.,

Plaintiffs,
vs.

UNITED STATES OF AMERICA; INTERSTATE COM-
MERCE COMMISSION; AND CORNELIUS W. STYER;
DOING BUSINESS AS NORTHERN TRANSPORTATION COMPANY,
Defendants;

GLENDENNING MOTORWAYS, INC.,
Intervening Defendant.

MOTION TO AFFIRM AND DISMISS.

Appellee, Cornelius W. Styer, pursuant to Rule 12, Paragraph 3, and Rule 7, Paragraph 4, moves that the judgment and decree of the District Court be affirmed.

The ground of the above motion is that the questions upon which the decision of the cause depends are so unsubstantial as not to need further argument.

This is a direct appeal from the final judgment and decree entered herein on June 12, 1943, of a specially consti-

tuted court of three judges. The judgment and decree were entered in conformity with the findings of fact, conclusions of law and decision of the court entered upon that date.

Appellants' complaint prayed that a portion of an order of the Interstate Commerce Commission be set aside and annulled. The lower court adjudged a dismissal of the complaint.

Service of the documents set forth in Rule 12, Paragraph 2, was made upon Appellee Styer on August-19, 1943.

ARGUMENT.

Argument will be addressed to the content of the assigned errors, and to that portion of the appellants' jurisdictional statement wherein it contends that the questions involved are substantial. Each of the latter documents raise the same points.

The decision of the Lower Court, and the Commission's order, well state the nature of the proceedings before the Commission. It need not be repeated here. Upon this motion it suffices to say that Appellee Styer projected the business of a motor carrier but two months before the Grandfather date of June 1, 1935, and filed two applications with the Interstate Commerce Commission for certificates of public convenience and necessity.

One of the applications was filed pursuant to the Grandfather Clause of the Act. Its determination depended upon the proof of "bona-fide operation as a common carrier by motor vehicle on June 1, 1935, over the *route* or *routes* or within the territory"

¹ Sec. 206 (Added August 9, 1935, as amended June 29, 1938, and September 18, 1940.) (U. S. Code, title 49, sec. 306.) (a) Except as otherwise provided in this section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in

We have emphasized "route or routes" because the Act contemplates operations over *routes*—not to and from *points*, as appellants contend. See Sec. 208, Part II, Interstate Commerce Act (U. S. Code, Title 49, Sec. 308).

In this application, Appellee Styer sought the right to operate between Minneapolis and St. Paul, Minnesota, hereafter called the Twin Cities, and Mitchell, South Dakota, over three routes designated by the Commission, the Court and the parties as Routes Nos. 1, 2 and 3. A large number of the intermediate points upon each of these routes lies in South Dakota. The remainder are Minnesota points. The right to operate over routes 1 and 2, with service to all intermediate points upon the routes, was authorized by the Commission under this application (Grandfather). In addition, and pursuant to the same application, the Commission authorized Appellee to operate over Route 3, but between terminal points only, viz., the Twin Cities and Mitchell, South Dakota. Service to the intermediate points on Route No. 3 was denied by the Commission under this application.

force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: Provided, however, That, subject to section 210, if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation and has so operated since that time, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after this section shall take effect, and if such carrier was registered on June 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered in connection with the issuance of such certificate.

The other application, embracing the three routes, was filed pursuant to Section 207 (a), and its determination depended upon the finding by the Commission that the public convenience and necessity required the operation. The Commission, having granted the right to serve between the terminal points on Route 3 under the Grandfather Clause application, authorized Appellee, under the "public convenience and necessity" application, to serve the intermediate points on Route 3.²

The question before the Court, therefore, deals only with intermediate points on established routes. The Commission's finding that there were bona fide operations on the grandfather date between the *termini*, the Twin Cities on the one hand, and Mitchell, South Dakota on the other hand, is not questioned. The finding that there were bona fide operations on the grandfather date from the Twin Cities over the routes to the *intermediate route points in South Dakota*, and from those South Dakota intermediate route points to the Twin Cities, is not questioned.

The issue is reduced to the correctness of the Commission's grant of authority to serve small parts of these three routes, viz.: those intermediate points lying along the routes within the State of Minnesota. The issue as to the intermediate Minnesota points on routes 1 and 2 arises under the grandfather application. The issue concerning the intermediate points on route 3 arises under the "public convenience and necessity" application.

In short, the Commission, with foundation here undisputed, properly authorized the appellee Styer to serve between the terminal points and to and from a large number of the intermediate points upon the routes. Appellants object to the Commission's inclusion of certain intermediate points upon the routes—being those in Minnesota. The

² Other routes not here pertinent were granted, and some were denied.

Commission in accordance with the statute, Section 206(a) granted the routes. The appellants by this action seek to "break up" the routes granted and compel the motor carrier to refuse proffered shipments of the public destined to these Minnesota points, even though the trucks pass through each of them daily. Such a situation does not promote "economical and efficient service * * * in transportation * * *" as required by the national transportation policy. (Act of September 18, 1940, Chapter 722, Title 1, Section 1, 54 Statutes 899, amending Chapters 1, 8, 12 and 13 of Title 39 U. S. Code.)

The Commission's Grant of Authority under the "Grandfather" Application to Serve Intermediate Minnesota Points on Routes 1 and 2 Was Plainly Correct.

Appellants attack the Commission's order in the respects above mentioned upon two grounds. The first ground is that there was no evidence offered as to "grandfather service" to these intermediate route points in Minnesota, i. e., service on or before June 1, 1935.

The Commission, in the assailed order, found as follows:

"Prior to June 1, 1935 applicant served the intermediate points on routes 1, 2, 4 and 5 of Brookings, Iroquois, Forestburg, and Madison, (South Dakota points). Applicant does not claim the right to transport interstate shipments from the Twin Cities to points on his routes in Minnesota, but claims that such points were served eastbound from South Dakota. Although the proof of service at intermediate points on the above routes is not impressive, when considered in connection with the fact that operations by applicant were instituted only 2 months prior to the statutory date and the testimony of applicant that he did not limit his service to terminal points but held out service to all intermediate points and actually solicited such business, we are convinced that he should be authorized to serve

all intermediate points on routes 1, 2, 4, and 5, and that a restriction to serve certain intermediate points in one direction only would make the authority granted unnecessarily complicated and it will not be imposed." (Our insert)

The lower court, after citing numerous Commission decisions, stated the long established principle followed by the Commission:

"The Commission has, in effect, ruled in similar proceedings that proof of actual operations as a common carrier to and from termini and some intermediate points on a regular route, *coupled with evidence of a holding out of service and of a willingness and ability to serve* all points on the route whenever shipments are offered, will justify a finding of bona fide operation to and between all points on the route. See Nevitt Common Carrier Application, 4 M. C. C. 298, 299-300; Consolidated Freight Lines, Inc., Common Carrier Application, 11 M. C. C. 131, 136; Knaus Common Carrier Application, 20 M. C. C. 669, 671; Los Angeles-Seattle Motor Express, Inc., Common Carrier Application, 24 M. C. C. 141, 145; Tarbet Common Carrier Application, 31 M. C. C. 63, 66-67." (Our emphasis)

The lower court further found:

"There was evidence before the Commission sufficient to justify the inference that prior to June 1, 1935, Styer was able to serve intermediate points in Minnesota on routes 1, and 2, and *had held out service* to such points." (Our emphasis)

Upon the precise issue, here presented, the lower court correctly said:

"In the instant case, it is apparent that the Commission regarded the proof of actual service between termini and to intermediate points in South Dakota,

together with the evidence which tended to prove that Styer was offering and was able to serve intermediate points, whether in Minnesota or South Dakota, on the 'grandfather' routes, as sufficient to justify the grant which it made to Styer. Proper deference must be paid to the Commission's interpretation of the law which it enforces, *Gregg Cartage & Storage Co. v. United States*, 316 U. S. 74, 88, and, if there is any warrant in the record for the judgment of the Commission, it must stand. *Rochester Telephone Corp. v. United States*, 307, U. S. 125, 145-146. We think that the Commission's determination that Styer was entitled to the rights granted because of his bona fide operations as a common carrier on and prior to June 1, 1935 did not amount to an abuse of power."

And again:

"It must be true, however, that the Commission, in determining the nature and extent of the "grandfather" rights of a carrier in a particular case, is not required to do so with mathematical precision, and that, within reasonable bounds, its estimate of the character and scope of the carrier's bona fide operation on and prior to June 1, 1935, must be accepted by the courts, which cannot substitute their judgment for that of the Commission."

Inasmuch as bona fide operation on the "grandfather" date without dispute existed between terminal points and to and from intermediate points in South Dakota, the only issue is whether or not there was evidence which tended to prove that Appellee Styer was able and was offering to serve the remaining intermediate points in *Minnesota*.

His ability to serve these points cannot be questioned. His trucks daily operated over the routes and through the intermediate Minnesota points. There was no "operating" or other reason why, on June 1, 1935, he could not have

served those points had the business been offered. Styer testified upon this point as follows:

"The regular operation as indicated by the routes there on the map are the routes over which our trucks go daily and that service is given. These trucks go through these towns over those routes whether or not they have shipments for every town on every particular day."

Quotation is from Lower Court's decision. Map referred to is applicant's Exhibit 1, which shows only the Minnesota segments of the routes involved.

The evidence which tends to prove that Appellee Styer was "offering" to serve all points on these routes, whether in Minnesota or South Dakota, lies, in part, in his testimony, also quoted by the Lower Court in its decision:

"On and prior to June 1, 1935, I solicited business for intermediate points on the regular routes I operated over. I contacted personally quite a few shippers
• • • It was my purpose from the beginning to solicit and render service to the intermediate points."

And again:

"The drivers were instructed to solicit business from all towns on the routes which they passed, to solicit freight in either direction." (Appellant's Statement of Evidence, p. 16, Tr. 57.)

And again:

"We accepted any freight we were able to get from the time we started. We solicited freight from all points along the route. • • •

"Never at any time did I intend or offer to the public simply a non-stop operation between the Twin Cities and Huron prior to June 1, 1935. (Appellant's Statement of Evidence, p. 16, Tr. 54 and 55.)

The above testimony stands undenied and uncontradicted by any witness.

To the Lower Court it seemed "probable" that Appellee Styer was referring in his testimony to South Dakota intermediate points because "his tariffs apparently cover no other intermediate points on his routes." We submit, however, that the court properly adopted the Commission's interpretation of the testimony. The tariff referred to is Exhibit 5, a list of towns printed upon a card and circulated among shippers in the Twin Cities by Crabb, Appellee Styer's predecessor, and by the Appellee Styer. The towns listed were South Dakota points. It was not a "tariff" in present-day form. There was then no regulation of the rates, and tariffs, as we now know them, were not employed. To those familiar with the transportation fact situation here involved the reason why South Dakota points only were listed upon these cards was this: Shipments originating with shippers in Minneapolis and St. Paul, destined to intermediate Minnesota points on these routes constituted *intrastate* traffic which neither Crabb nor Styer was authorized to carry. Neither could pick up a shipment from shipper A in Minneapolis and lawfully deliver it to consignee X in Lamberton, Minnesota. The necessary result is that a card to be circulated to Twin City shippers need carry only the names of the points between which the movement would be *interstate*. The only shipments moving interstate westbound over Styer's routes to Minnesota points were those which he received by interchange from connecting carriers at the Twin Cities. These connecting carriers brought those shipments into the Twin Cities from Chicago and other points outside of the State of Minnesota. These shipments Styer could lawfully handle. So far as Crabb or Styer was concerned, an offer to Twin City shippers would attract shipments from the Twin Cities to points in South Dakota only. (Appellant's Statement of Evidence, pp. 15

and 35, Tr. 46, 47 and 48). Appellants would have the Commission and the Court believe that these South Dakota points named on the cards were the only intermediate points which Appellee Styer offered to serve. They were the only points to which Styer could render an interstate service to *Twin City shippers*.

We submit that the Lower Court was entirely correct in permitting the Commission's interpretation of the language to stand. Exhibit 1 to which Styer was referring was a map of Minnesota routes only and his testimony of necessity referred to Minnesota points. The Commission is daily involved in these somewhat complicated transportation situations, and could the more readily value and weigh the effect of the fact that Exhibit 5, being circulated to Twin City shippers only, listed South Dakota intermediate route points only.

Additional support for the finding that Appellee Styer offered and held himself out to serve these Minnesota intermediate route points is shown on the Appellant's Abstract of Styer Exhibit 7, p. 37 of Appellant's Statement of Evidence. The abstract shows the following points actually served after the grandfather date:

<i>Route 1</i>	<i>Route 2</i>	<i>Route 3</i>
Gibbon	Marshall	Jackson
Norwood	Gaylord	Worthington
Sleepy Eye	Slayton (2, 4)	Lake Crystal
Tracy	Ivanhoe	Fairmont
Balaton	Redwood Falls	Mankato
Lamberton		Adrian
Springfield		
New Ulm		

May we add that Appellant's abstract of Exhibit 7 is not complete. The exhibit itself reflects many more shipments each year of operation from April 1, 1935, to November 12, 1938.

In addition, the Commission, in its decision, found that the applicant's business grew to more than a million pounds per month.

The point is that Styer, on April 1, 1935, projected a motor carrier business which embraced all intermediate points on routes 1 and 2 on the grandfather date. He had been in business but two months. No business is born full grown. It takes time to develop it. It was as Styer testified "because of various contacts at some of these towns, we got much more freight there. I was born at Huron and was well acquainted there, and consequently, Huron developed faster than at some other points." (Appellant's Statement of Evidence, pp. 15, 16.)

The fact that he obtained traffic to these Minnesota points after June 1, 1935, simply meant that such traffic was the fruit of his efforts at solicitation from the beginning of his business on April 1, 1935, and extending to and on the grandfather date of June 1. It corroborated, we submit, his own testimony of solicitation at those points prior to and on the grandfather date.

The record contains several like evidences of Styer's offer to serve these intermediate route points in Minnesota. The above is sufficient to demonstrate that the Commission's finding was based upon substantial evidence.

It is apparent that the principal question in this case is one of fact. In reaching a conclusion the Commission was called upon to weigh the evidence. It did so. It believed Styer's testimony that he did solicit traffic to and from these Minnesota points and that service thereto was embraced within the general plan which he projected on April 1, 1935. It is the law, as we understand it, that the Court will not declare invalid the Commission's decision where the case turns upon the weight which the Commission gives to the evidence before it.

We submit that a substantial question is not presented to this Court where the principal question involved is the weight of the evidence before the Commission.

In *McArthur et al. v. United States*, 315 U. S. 787, 86 L. Ed. 1192, 62 Sup. Ct. Rep. 915, the court granted the motion to affirm upon the ground that the questions therein involved were not substantial. A reference to the lower court's decision (44 Fed. 697) indicates to us that the only question there involved was whether or not there was substantial evidence in support of the Commission's disposition of the problem.

In *Alton R. Co. et al. v. United States, et al.*, 315 U. S. 15, at 23, the court said:

"The weighing of such evidence involves in part a judgment based on the characteristics of the highly specialized transportation service involved. Thus, as we have said, that function is peculiarly one for the Commission, not for the courts."

And again:

"The question whether his operation in a particular state was 'bona fide' is a question of fact for the Commission to determine. * * *

"Our task is ended if there is evidence to support the Commission's finding of bona fides."

In *United States et al. v. Carolina Freight Carriers Corporation*, 315 U. S. 475, at 481, the court said:

"That involved a weighing of specific evidence in light of the complexities of this transportation service. The judgment required is highly expert. Only where the error is patent may we say that the Commission transgressed."

And again at 483:

"We would not disturb those conclusions if only a question as to the weight of the evidence was involved."

And again at 490:

"That entails not only a weighing of evidence but the exercise of an expert judgment on the intricacies of the transportation problems which are involved. That function is reserved exclusively for the Commission. (Citing cases.)"

In *Loving v. United States, et al.*, 310 U. S. 609, 84 L. Ed. 1387, 60 Sup. Ct. Rep. 898, this court affirmed the lower court's decision in *Loving v. United States*, 32 Fed. Sup. 464. In the latter case the three judge court said:

"It is further held that the determination of controverted matters of fact arising in whether a carrier was in bona fide operation within the immunizing period of the Statute, was entrusted to the Interstate Commerce Commission. See *United States v. Maher*, supra. This court is therefore powerless to hear the evidence or to review the proof submitted to the Commission in the instant case."

And again:

"The hearing of evidence is an exclusive function of the Commission and it may disbelieve or disregard any evidence as it seems unconvincing; it may give as much or as little weight to evidence as it seems proper. (Citing cases.)"

The granting of authority under the "Public Convenience and Necessity" application to serve intermediate points on route 3 is plainly correct.

As to the Intermediate Points on Route 3.

As aforesaid, the Commission, pursuant to proof under the "Grandfather" application, granted this Appellee the right to operate over route 3, serving termini of Minneapolis and St. Paul on the one hand, and Mitchell, South Dakota, on the other hand, but without service to the intermediate

points on that route. The route extends, generally, from the Twin Cities through Mankato, Worthington, Jackson and Luverne, Minnesota, and Sioux Falls, South Dakota, to Mitchell, South Dakota.

The correctness of the Commission's finding here depends upon proof of public convenience and necessity, not upon operation prior to and on June 1, 1935. In this case, Congress has commanded the Commission to make paramount the interests of the public.

Sioux Falls, South Dakota is the largest point in population upon the route, and at the hearing much of the testimony centered about need for service at that point. In its report the Commission also devoted much of its discussion to the showing respecting Sioux Falls. The Commission said, respecting the entire route:

"There is other service between the Twin Cities and points on applicant's routes in South Dakota by rail and motor carriers, and no witness testified directly that applicant's service was absolutely necessary in the conduct of his business. However, the testimony of these witnesses, when considered in connection with the evidence of past operations by applicant conducted continuously since prior to October 15, 1935, the volume of freight handled by him and the fact that the business of other carriers operating in the same territory has also grown during the years immediately preceding the hearing, is convincing evidence that his service is fulfilling a public need and that we should not require the discontinuance of his existing service between the Twin Cities and Sioux Falls, Yankton, and intermediate points on routes 3, 6, 9, 10, and 11 in connection with operations over the routes applicant is found entitled to operate by reason of his 'grandfather' rights." (PP. 40, 41, Commission's Decision) (Our emphasis.)

The evidence concerning past operations to all points, including intermediate points, was voluminous. Appellee Styer had commenced business but two months before the

grandfather date. Thereafter, and in the normal, natural course of his business, traffic to and from all intermediate points was developed. The Commission said:

"Applicant has shown that his business has grown continuously until in 1938 he was handling more than 1,000,000 pounds of freight per month." (P. 40, Commission's Decision.)

We submit that the actual use of service over a long period of time is the highest and best proof of public convenience and necessity. The public will not patronize an unnecessary service—at least for an extended period.

The Commission has long held that proof of past operations is evidence of public convenience and necessity. We cite but a few of the Commission's decisions thereon: In *Washburn Storage Company, Extension of Operations*, 29 M. C. C. 116; the Commission said:

"We have consistently held that long-continued successful operation is evidence of public convenience and necessity."

In *System Transfer & Storage Co.*, BMC-8, 6 M. C. C. 657, the Commission said:

"The fact that applicant has operated as a carrier of household goods in interstate commerce by motor vehicle since many years prior to June 1, 1935, raises a presumption that the public convenience and necessity require a reasonable extension of the territory served in proportion to the growth of applicant's business."

In *Nathan I. Snyder, Common Carrier Application*, 7 M. C. C. 500, where Snyder had been in business for six or seven years, the Commission held that:

"The performance of such operations for a long period of time . . . and continuing requests from customers to perform such service are evidence that applicant is able to continue to render the same service as

he has in the past, and that the public convenience and necessity require continuance of such operations."

In *Brown Motor Freight Lines, Inc., Common Carrier Application*, 2 M. C. C. 667, the Commission said:

"Applicant has served the public for a substantial period and its business has been steadily growing. In the absence of facts showing the contrary, this would be one method of determining public convenience and necessity."

In *Dougherty Storage and Van Co.*, 3 M. C. C. 427, the Commission said:

"Successful operation in the past creates a presumption of public convenience and necessity requiring the continuance of such operation."

Appellants' "abstract of Styer's Exhibit No. 7" and "abstract of Styer's Exhibits 19 and 20", attached to their Statement of Evidence, shows the following shipments to the named intermediate points on route 3: Jackson, Mankato, Lake Crystal, Worthington, Fairmont and Adrian. Luverne and LeSueur are omitted from appellant's abstract, but shown in Styer's Exhibit No. 7.

The above are the principal points upon the route. Appellants' abstracts, however, are not complete. They are taken from the exhibits of record for proof of past operations. Appellee did not offer exhibits showing each and all of the multitude of shipments made between June 2, 1935, and the date of the hearing in 1938. He selected only certain months of operations; hence, appellants' abstracts cannot be complete as to the number of shipments or points served.

There was abundant evidence of past operations. The Commission rightly considered the fact of past public use as evidence of public convenience and necessity. That conclusion cannot be successfully assailed.

The Lower Court disposed of this question in a somewhat different, although entirely adequate, manner:

"The plaintiffs argue that Styer's amendment to his application was equivalent to an assertion that he was unwilling to serve intermediate points in Minnesota on route 3, and that it deprived the Commission of authority to grant him the right to serve such points. We think that this argument is too narrow and legalistic. The primary concern of the Commission with respect to operations over route 3 was the public interest and the furtherance of the transportation policy declared in the Act. We have no doubt that under § 207 (a) and § 208 (a), the Commission could condition its grant of operating rights over route 3 to meet its conception of what public convenience and necessity required of Styer. That Styer was not unwilling to accept the full grant of authority made by the Commission has since been demonstrated by his actual acceptance and use of it. In urging that Styer received greater operating rights than he asked for or was willing to accept, it seems to us that the plaintiffs are urging a grievance which is not theirs."

In short, the Court has said that under Section 207 (a) requiring proof of present or future public convenience and necessity, the Commission has the power to require these intermediate points to be served. The Court also states that the same power exists under Section 208 (a). Section 208 (a) provides, in substance, that at the time of the issuance of a certificate under either Section 206 or Section 207, the Commission may attach such reasonable terms and conditions as the public convenience and necessity may require, and all of such terms and conditions as are necessary to carry out the national transportation policy.

As aforesaid, we submit that the proof of past operations and the volume of freight handled by Appellee during the three years preceding the hearing are ample evidence of

public convenience and necessity. The Commission, if acting under Section 208, had substantial reason for requiring service to these intermediate points. The proof of need for service to Sioux Falls, South Dakota, was compelling and is not here questioned by the Appellants. As a consequence, the Commission correctly found that Sioux Falls, South Dakota, the largest intermediate point upon the route, required the continuance of the service. In order to serve Sioux Falls and Mitchell, South Dakota, applicant's trucks must daily pass through the intermediate Minnesota points. All trucks are not loaded to capacity. In this northwestern area, the principal movement of goods is westerly. The "backhaul" is the carrier's problem. It is our view that the Commission desired to avoid the wasted transportation resulting from movement of empty trucks, or trucks not loaded to capacity, through these intermediate Minnesota points. It is so enjoined by the national transportation policy. Therein, the Commission has commanded the "prompt, safe, adequate, economical and efficient service"; and to attempt to attain the end of developing a necessary transportation system by water, highway and rail adequate to meet the needs of commerce of the United States. Under this declaration of policy, there can be no question concerning either the power or the wisdom of requirement of the conditions imposed.

Eastbound Operation.

Appellants admit that an eastbound operation was conducted by appellee during the "grandfather" period. They dispute the characterization given it by the Commission. The Commission held that the eastbound operation was *in fact* a regular route operation and not an irregular route service. The appellants urge that the eastbound operation was an irregular route service and, in addition, claim that

such service was the only type of operation then being conducted by appellee. Neither of the appellants' claims is true. Appellee's testimony is quoted at length in the Court's decision. The language used by appellee is misconstrued by appellants. It is clear from the reading thereof that Styer had two types of operations: (1) one, the regular route operations between the Twin Cities and Mitchell, South Dakota in *both* directions, (2) and in addition, an irregular route operation—meaning between South Dakota points and all points within a described territory in Minnesota. Because the "back-haul" or eastbound tonnage out of South Dakota was light, Styer desired to be able to pick up shipments in South Dakota and transport them to any point in Minnesota.³ This irregular operation was in addition, and, to a degree, super-imposed upon his regular operations. The testimony quoted in the Court's decision makes his claims sufficiently clear.

The Commission discussed these eastbound operations in its decisions at pages 38 and 39:

"In addition to the operations conducted over regular routes described above, applicant also claims to have been engaged in the transportation of general commodities over irregular routes between points in that part of South Dakota described in his amended 'grandfather' application, on the one hand, and on the other, points in Minnesota. He explained that he did not keep complete records during the first few months of operation and that no billing was made on shipments moving from South Dakota points to points in Minnesota which were not handled through his terminal at the Twin Cities, where all of his billing was done. On the contrary such shipments were covered only by memoranda of the drivers on shippers' bills of lading, copies of which were not retained. He testified that in this service he hauled various commodities, including

³ This territory was later reduced by amendment.

potatoes, farm produce, canned goods, construction machinery and supplies, building supplies and materials, machinery, printing presses, and household goods. Applicant's testimony relating to irregular route operations is supported by reference to only nine specific shipments handled on and prior to June 1, 1935, consisting of one shipment of potatoes from Atkinson, Minn., to Huron, one shipment of malted milk from Huron to White Bear, Minn., and one shipment of merchandise from St. Paul to Miller, S. Dak. Although applicant contends that records covering all such movements during that period are not available, an examination of the exhibits showing all movements during October and November, 1938, which are the only months after 1935 for which complete abstracts of shipments were furnished, and during which period no lack of documentary evidence is claimed, shows that out of approximately 3,300 shipments handled only 13 shipments are shown to have moved to or from only seven points which are not on his regular routes. While the testimony of applicant as to operations over irregular routes is substantiated by reference to particular shipments handled before June 1, 1935, might warrant granting of authority to operate over irregular routes, the complete documentary evidence covering a subsequent period during 1938 strongly indicates that applicant's business has evolved into that of a regular-route operation with only occasional or sporadic trips to off-route points or points in irregular-route territory. We conclude that upon the evidence we are not warranted in granting applicant authority to transport either general or specific commodities over irregular routes under the 'grandfather' clause of the act."

It will be noted that appellee, for a period after the grandfather date, carried some 3,300 shipments from South Dakota to points in Minnesota. All were destined to Minnesota points on his regular routes except 13 shipments which went to points not on such routes. This experience,

after the grandfather date, was correctly construed by the Commission to reflect the true nature of his operations and solicitation on or before June 1, 1935. The destinations of those shipments reflected the offer of service he was making on the grandfather date. The shipments, in fact, were the result of his solicitation efforts in building up the business.

The Commission denied the applicant's claim for irregular route service between South Dakota to Minnesota points, but granted the right to continue his regular route operation. Thus, the Commission granted appellee an authority which conformed to the facts as shown by the record.

There was no "conversion" by the Commission of appellee's business from an irregular eastbound operation to a regular route operation. As aforesaid, the Commission granted appellee the type of rights the facts warranted. In its opinion, the facts manifested an eastbound regular route operation and did not show an irregular route operation to a large Minnesota territory as his application requested. Hence, it is clear that the rule of *U. S. v. Maher*, 307 U. S. 148, cited by appellant, has no application to the instant case. Maher conducted an irregular route business, and nothing else, on the grandfather date. Thereafter, he commenced a regular route operation and abandoned the irregular type of operation. He changed from one type to another. It was held that his regular route operation could not continue without proof of public convenience and necessity. Here appellee, on the grandfather date, conducted the regular route operation and in addition thereto claimed that he operated an irregular service to a large Minnesota territory. The Commission granted the first, but denied the second.

The Commission's disposition of the problem was one resting solely in the conclusions it reached from the evi-

dence in the record. Again the question, in essence, is one of fact and involved the weighing of testimony.

The Court will not disturb such findings of the Commission. The question is not substantial, and no further argument is required.

Appellee's Stipulations and Amendments.

Appellants seek to make much of the incident that at the hearing the applicant Styer did not claim the right to serve intermediate points in Minnesota. Such was not the effect of the stipulation or amendment. By the stipulation under the "grandfather" application and the amendment under the "public convenience and necessity" application, Styer sought to exclude service in interstate commerce *between* Minnesota intermediate points only and in between those intermediate Minnesota points and points outside the State of Minnesota. (Statement of evidence page 18.) (Paragraph 3 of appellee's motion attached to appellants' statement of evidence.) Appellants have sought to make it appear that the stipulation and amendment excluded *all* service to or from these intermediate points in Minnesota. Such was neither the language nor the intent. Styer attempted to exclude service *between* intermediate points in Minnesota only upon these routes. This would have eliminated only the transportation of shipments taken by Styer through interchange with other outstate carriers at the Twin Cities. Styer continued service to, from and between these intermediate points in Minnesota from the beginning of his business through the date of the hearing in November 1938, and notwithstanding his offer of restriction at the hearing continued the same service thereafter until the Commission, by its decision, directed that there be no cessation of it.

The appellants urge that in some unexplained way the Commission is bound by the claims of parties to these pro-

ceedings. This is not an "adversary" proceeding in the sense of two private litigants before a Court with a dispute concerning *private* rights. The paramount concern of Congress and the Commission is the *public* interest and the furtherance of the national transportation policy. Congress had vested the Commission with great powers. These were to be exercised according to its judgment as to the needs of the public. In a real sense, there are three parties to the proceeding, viz: the applicant, the public and the protestants. When the public's interests are primary, the Commission is free to disregard the claims and stipulations of the parties. It would be strange, indeed, if a carrier, a public utility, could at will or by stipulation or amendment or otherwise dictate to the Commission the nature and extent of the authority it is to receive or the nature and, consequently, the extent of the service it is to perform. If the carrier could so dictate, he could and would serve only the larger and more profitable shipping points along these routes and leave the smaller communities without transportation service. Even a railroad cannot abandon lines without authority. If a motor carrier were legally free to do so, he could reject unprofitable types of freight and accept only those shipments which were profitable. The national transportation policy is designed to promote adequate, economical and efficient service to the end of establishing a national transportation system, and envisions the precise contrary of the contentions advanced by the appellant railroads.

The national transportation policy provides:

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the *inherent* advantages of each; to promote safe, adequate, *economical*, and *efficient* service and foster sound economic conditions in

transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of *developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense.* All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.”

Upon the point raised, the Lower Court said:

“The plaintiffs argue that Styer’s amendment to his application was equivalent to an assertion that he was unwilling to serve intermediate points in Minnesota on route 3, and that it deprived the Commission of authority to grant him the right to serve such points. We think that this argument is too narrow and legalistic. The primary concern of the Commission with respect to operations over route 3 was the public interest and the furtherance of the transportation policy declared in the Act. We have no doubt that under § 207(a) and § 208(a), the Commission could condition its grant of operating rights over route 3 to meet its conception of what public convenience and necessity required of Styer. That Styer was not unwilling to accept the full grant of authority made by the Commission has since been demonstrated by his actual acceptance and use of it. In urging that Styer received greater operating rights than he asked for or was willing to accept, it seems to us that the plaintiffs are urging a grievance which is not theirs.”

Appellee points out, as the Court found, that he accepted the full grant of authority made by the Commission and

has since, as previously, rendered the service required by the certificate issue. He also urges, as did the Court, that the appellants are here urging a grievance which is not theirs to urge. The protestants are "parties" to the proceeding, but they are not *defendants* in the usual sense. Where the public is a more important "party" and its interests dictate a result contrary to these appellants' claims, the public must prevail.

At all events, whether to regard or disregard the appellee's interpretation and claims concerning his rights and duties was an administrative question for the Commission's determination: Whether or not the proffered restriction would complicate the authority granted was a problem for administrative consideration and disposition. It is clear to us that an alarming chaos could result if an applicant carrier, a public utility, could pick and choose the points he desired to serve. If the Commission were to authorize a carrier to serve Point A, permit him to avoid service to point B, authorize point C and omit point D—all on the same route and but a few miles apart—it would result in confusion to shippers. There are thousands upon thousands of small towns in this country. A large shipper should not be forced to ascertain whether carrier X serves points B, C and D, or whether carrier Y serves point A and carrier Z serves point E, all on the same route. This result does not promote efficient service to the public. Such situations must have impressed the Commission because it refused to permit the restriction Styer offered.

Administrative questions will not be disturbed by the Courts so long as the Commission stays within the bounds of its statutory powers.

Rochester Telephone Corporation v. United States,
307 U. S. 125, 59 Sup. Ct. Rep. 754.

Kansas City S. R. Co. v. United States, 231 U. S. 423,
58 Law Ed., 296.

United States v. Carolina Freight Carriers Corporation, 315 U. S. 475.

Federal Radio Commission v. Nelson Bros. Bond & Mtg. Co. (1933), 289 U. S. 266, 276, 277, 77 L. Ed. 1166, 53 S. Ct. 627, 89 A. L. R. 406.

Inasmuch as the wisdom of the disposition of such questions is for the administrative body and not for the Courts, issues concerning them are not substantial.

CONCLUSION.

We submit that the questions raised are so unsubstantial as not to require further argument.

The only questions raised are: (1) the weight to be given the evidence, and (2) administrative questions concerning which the Court cannot substitute its judgment for that of the Commission. The law is, and ought to be, that these questions are not for the Courts, but for the expert judgment of the Commission. No other questions are here presented:

STINCHFIELD MACKALL CROUNSE & MOORE
AND PERRY R. MOORE,

For Appellee Styer.

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CLERK

SUPREME COURT OF THE UNITED

STATES

OCTOBER TERM, 1943

No. 482

**CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA
RAILWAY COMPANY, ET AL.,**

Appellants,

vs.

**THE UNITED STATES OF AMERICA, INTERSTATE
COMMERCE COMMISSION, ET AL.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF MINNESOTA.**

**MOTION TO AFFIRM BY GLENDENNING MOTOR-
WAYS, INC.**

✓ **FRED W. PUTNAM,**
Counsel for Appellee,
Glendenning Motorways, Inc.

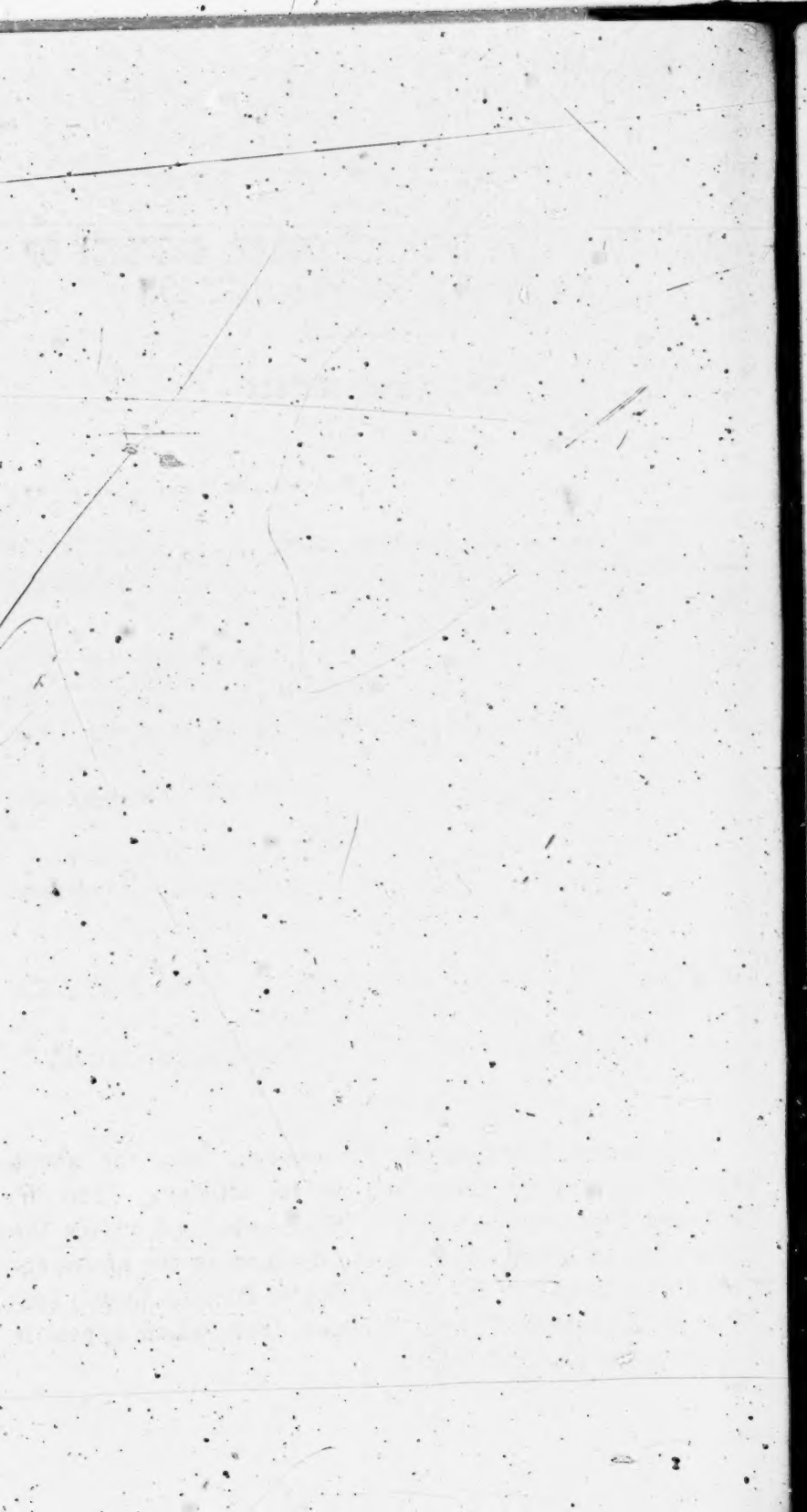
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<i>McDonald v. Thompson</i> , 305 U. S. 263, 59 Sup. Ct. 176	6



**UNITED STATES DISTRICT COURT, DISTRICT OF
MINNESOTA, FOURTH DIVISION**

Civil Action No. 811.

**CHICAGO, SAINT PAUL, MINNEAPOLIS & OMAHA
RAILWAY COMPANY (A WISCONSIN CORPORATION), ET
AL.,**

Plaintiffs,

vs.

**UNITED STATES OF AMERICA; INTERSTATE COM-
MERCE COMMISSION; AND CORNELIUS W. STYER,
DOING BUSINESS AS "NORTHERN TRANSPORTATION COM-
PANY,"**

Defendants;

GLENDENNING MOTORWAYS, INC.,

Intervening Defendant.

**MOTION ON BEHALF OF INTERVENING DEFEND-
ANT, GLENDENNING MOTORWAYS, INC., FOR
AFFIRMANCE OF ORDER OF DISTRICT COURT.**

Now comes Glendenning Motorways, Inc., the above named intervening defendant, by its attorney, Fred W. Putnam, Esq., of Minneapolis, Minnesota, and moves the Court for an order affirming the decision in the above entitled case issued by the United States District Court, District of Minnesota, Fourth Division, from which appeal is taken by the plaintiffs herein.

The basis of said motion is:

(1) That the issues raised by this appeal and now before this Court are matters so unsubstantial as not to need further argument.

(2) That the only issue raised by the appeal is whether there was evidence before the Interstate Commerce Commission to support its order; and that the appeal papers clearly show that there was sufficient evidence before the Commission upon which the Commission could predicate the order issued.

Statement in Support of Motion.

Glendenning Motorways, Inc., the intervenor herein, is a corporation and is carrying on operations as a common carrier by motor vehicles under permits of the Interstate Commerce Commission. It serves territory generally described as follows:

From Chicago and Milwaukee to the Twin Cities;
Twin Cities to Fargo, North Dakota;
Twin Cities to Duluth, Minnesota; and
Chicago and Milwaukee points to Southern Minnesota,
including such cities as Rochester and Mankato.

On October 24th, 1941, Division 5 of the Interstate Commerce Commission issued its order on the application of Cornelius W. Styer authorizing the issuance of a certificate of public convenience and necessity. Thereafter the rail carriers filed a petition for reconsideration of that order, and on April 6th, 1942, the full Commission entered its order denying the petition for rehearing. On July 11th, 1942, the Interstate Commerce Commission issued its certificate of public convenience and necessity to Cornelius W. Styer pursuant to the order of October 24th, 1941.

Thereafter and on September 22nd, 1942, Glendenning Motorways, Inc., entered into a contract to purchase the rights of Mr. Styer under said certificate issued by the Interstate Commerce Commission. Thereafter a petition was filed with the Interstate Commerce Commission for the approval of said purchase, and said hearing was held on October 31st, 1942. Upon said date (October 31st, 1942) Mr. Glendenning was given a copy of the complaint that was filed in the District Court, and not served on Mr. Styer until several days later, asking said District Court to review the action of the Interstate Commerce Commission in granting said certificate. Thereafter the Interstate Commerce Commission duly approved the sale from Mr. Styer to Glendenning Motorways, Inc., and said Glendenning Motorways, Inc. is now in possession of and operating the properties owned by Mr. Styer over routes authorized by the certificate issued July 11th, 1942. On the showing of the interest of Glendenning Motorways, Inc. the District Court authorized said Company to intervene in said proceeding to protect its interest.

The assignment of errors in behalf of the plaintiffs clearly shows that the sole issues raised are based upon whether or not there was evidence before the Commission upon which they could rest their decision.

The trial Court quotes at length the testimony of defendant Styer, given before the Commission, as follows, to-wit:

"I claim to have a regular operation and an irregular operation in Minnesota. The regular operation is over the routes shown on Exhibit '1'. The irregular territory or routes are not indicated on this exhibit. I claim to have regular and irregular operations of general commodities. The regular operation as indicated by the routes shown on this map are the routes over which our trucks go daily and that service is given. Those trucks go through those towns over those routes whether or not they have shipments for

every town on every particular day. The irregular operation, for example, would be a shipment for Albert Lea where we would not go unless we had a shipment. In that nature it is irregular. The regular route operations are more or less on a fixed time schedule. That is the bulk of my operations. The irregular operation is only supplemental to our principal operation. It is principally for back haul out of South Dakota. The movement is unbalanced between the west bound and east bound freight and consequently the occasion arises for handling freight other than that destined to points on the regular routes, to attempt to balance the amount of freight moving, so that the trucks can more nearly move loaded in both directions. When I mention Albert Lea I don't know whether or not we have served that point. I mentioned that as an example.

What we are asking for is a territory to which we offered service prior to June 1 and to which we have offered service up to the present date, over irregular routes on loads when available because there is no direct service to that point and there is a demand for service. We have wanted it as a territory, to be operated in conjunction with our irregular route operation. In other words our irregular route operation is intended to take care of the movement mainly from South Dakota back into Minnesota. We are not asking for the right to transport commodities in interstate commerce from Minneapolis to Albert Lea. We are specifically restricting so as not to apply in interstate commerce between points in Minnesota. In short our operations from the Twin Cities to the South Dakota territory is chiefly our regular route operations.

Originally we asked for territory in the entire State of Minnesota. We have now restricted that to a small territory in the Southern and Southwestern part of Minnesota.

On and prior to June 1, 1935, I solicited business for intermediate points on the regular routes I operated over. I contacted personally quite a few shippers.
 • • • It was my purpose from the beginning to solicit and render service to the intermediate points."

Based upon the testimony as quoted the Court then quotes the following finding of the Commission:

"Prior to June 1, 1935, applicant served the intermediate points on routes 1, 2, 4 and 5 of Brookings, Iroquois, Forestburg, and Madison. Applicant does not claim the right to transport interstate shipments from the Twin Cities to points on his routes in Minnesota, but claims that such points were served eastbound from South Dakota. Although the proof of service at Intermediate points on the above routes is not impressive, when considered in connection with the fact that operations by applicant were instituted only 2 months prior to the statutory date and the testimony of applicant that he did not limit his service to terminal points but held out service at all intermediate points and actually solicited such business, we are convinced that he should be authorized to serve all intermediate points on routes 1, 2, 4 and 5, and that a restriction to serve certain intermediate points in one direction only would make the authority granted unnecessarily complicated and it will not be imposed."

The testimony of Mr. Styer quoted by the Court is set forth in the statement of evidence filed herein by the plaintiffs (p. 19) and are excerpts from the evidence before the Commission (pp. 277-283, inclusive).

The Commission accepted this evidence as worthy of belief and consideration and as basis for their order, and the quotation of the same by the trial Court is certainly an approval of the action of the Commission, so that no matter to what extent the record of this case is examined, or to what extent briefs are written and oral arguments presented, this Court must return to these portions of the record and to the conclusions arrived at by the Commission that there was evidence in support of the Commission's findings, and that the trial Court so found, so that the only question raised by the appeal is whether or not the evidence sustains the order of the Commission, and this has been passed upon by the trial Court.

The objections made by the plaintiffs herein go only to limited portions of the order issued by the Interstate Commerce Commission. No issue is raised as to the granting of rights between Minneapolis and St. Paul and points in South Dakota and between points in South Dakota. The only issue is between points within the State of Minnesota, and as to these points it is conceded the Commission would be authorized to issue authority for irregular operations. The points that the plaintiffs object to are points upon regular routes between the Twin Cities and South Dakota through which the motor vehicles of the defendant were operated and as to which the defendant testified that he had solicited business prior to June 1st, 1935, and had served these points during 1935 to the date of hearing. The points involved are not heavily populated, the volume of business would not be large, and the amount of freight that would be transported would be unsubstantial, and the actual issues raised by this appeal and now before this Court are matters so unsubstantial as not to need further argument.

Authorities.

Alton Railroad Company v. United States, 315 U. S. 15; 62 Sup. Ct. Rep. 432 (decided January 12, 1942);
McArthur, et al. v. United States, 315 U. S. 787; 62 Sup. Ct. Rep. 915 (A per curiam decision affirming 44 Fed. 697);
McDonald v. Thompson, 305 U. S. 263; 59 Sup. Ct. Rep. 176).

Respectfully submitted,

FRED W. PUTNAM,
 Attorney for Glendenning Motorways, Inc.,
 826 First National-Soo Line Bldg.,
 Minneapolis, Minnesota.

Dated August 27th, 1943.

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1913

No. 482

CHICAGO, SAINT PAUL, MINNEAPOLIS & OMAHA RAILWAY
COMPANY, ET AL.,

Appellants,

vs.

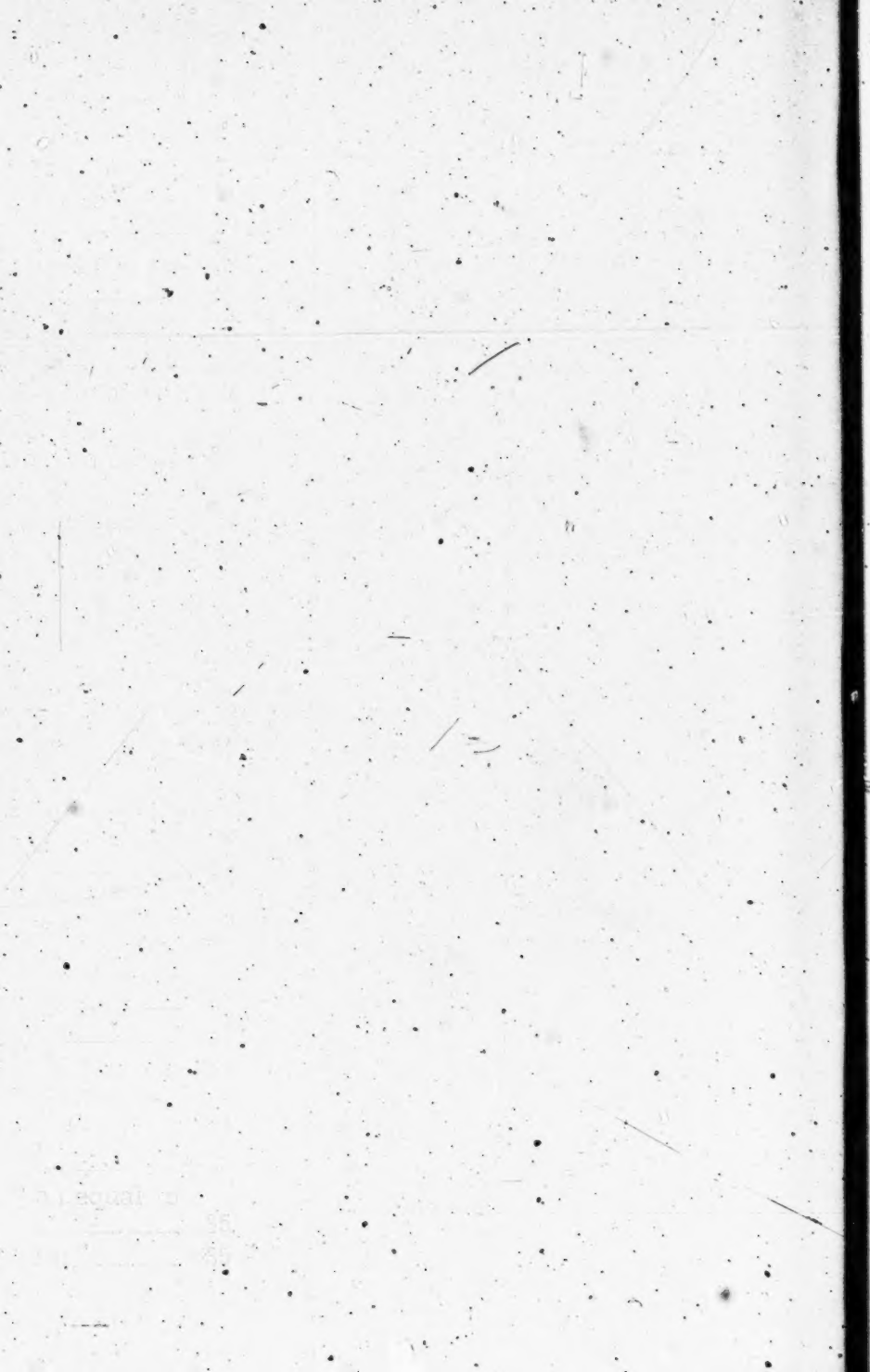
UNITED STATES OF AMERICA; INTERSTATE COMMERCE COM-
MISSION; CORNELIUS W. STYER, DOING BUSINESS AS NORTH-
ERN TRANSPORTATION COMPANY; AND GLENDENNING MOTOR-
WAYS, INC.,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MINNESOTA.

**BRIEF OF GLENDENNING MOTORWAYS, INC.,
APPELLEE**

FRED W. PUTNAM,
*Attorney for Glendenning
Motorways, Inc., Appellee.*



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IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1943

No. 482

CHICAGO, SAINT PAUL, MINNEAPOLIS & OMAHA RAILWAY
COMPANY, ET AL., *Appellants,*
vs.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE COM-
MISSION; CORNELIUS W. STYER, DOING BUSINESS AS NORTH-
ERN TRANSPORTATION COMPANY; AND GLENDENNING MOTOR-
WAYS, INC., *Appellees.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MINNESOTA.

**BRIEF OF GLENDENNING MOTORWAYS, INC.,
APPELLEE**

STATEMENT OF FACTS

Glendenning Motorways, Inc., the intervenor herein, is a corporation and is carrying on an operation as a common carrier by motor vehicles under permits of the Interstate Commerce Commission. It serves a territory generally described as follows:

From Chicago and Milwaukee to the Twin Cities;

Twin Cities to Fargo; Twin Cities to Duluth;

Chicago and Milwaukee points to Southern Minnesota,
including such cities as Rochester and Mankato.

The intervenor had for some time exchanged freight in the Twin Cities that originated in Chicago and Milwaukee with Cornelius W. Styer, doing business as "Northern Transportation Company." This freight was destined for points in Minnesota and South Dakota on the Styer line running west of Minneapolis. The offices of Glendenning and Styer were in the same neighborhood in the Twin Cities and Mr. Glendenning and Mr. Styer saw each other rather frequently.

On October 24th, 1941, Division "5" of the Interstate Commerce Commission issued its order on the application of Cornelius W. Styer authorizing the issuance of a certificate of public convenience and necessity. Thereafter the rail carriers filed a petition for reconsideration of that order, and on April 6th, 1942, the full Commission entered its order denying the petition for re-hearing.

After April 6th, 1942, and prior to the issuance of the certificate authorized, Mr. Glendenning, of the Glendenning Motorways, Inc., and Mr. Styer discussed the question of purchase and sale, "but there wasn't anything serious * * * because I figured that until he received a certificate he had nothing to sell in the line of rights" (R. 76).

On July 11th, 1942, the Interstate Commerce Commission issued its certificate of public convenience and necessity to Cornelius W. Styer, as set forth in the complaint herein as Exhibit "E." After the issuance of the certificate, and some time in the latter part of July, 1942, Mr. Glendenning and Mr. Styer had further talks in reference to the sale and purchase of the Styer property, but, prior to the time that Mr. Glendenning talked with Mr. Styer, Mr. Glendenning sent his employee, Mr. Jack Kriha, to the office of the Interstate Commerce Commission in Minneapolis, and Mr. Kriha obtained a copy of the certificate of public convenience and necessity issued to Mr. Styer on July 11th, 1942 (R. 76, and Intervenor's Exhibit "1").

Mr. Glendenning, relying on the issuance of said certificate of public convenience and necessity, carried on negotiations for the leasing and purchase of the property of Mr. Styer and the rights covered by said certificate. Mr. Glendenning investigated the properties of Mr. Styer, went with a group of his employees over the routes operated by Mr. Styer, and made a general investigation as to the advisability of the purchase, expending a substantial amount for that purpose (R. 77). As a result of said negotiations a contract or lease, known as "Defendants' Exhibit 'A,'" dated September 22nd, 1942, was executed, and a petition for temporary authority for Glendenning to operate said property was filed with the Commission and temporary authority was granted, effective October 13th, 1942, and actual possession and operation commenced by Glendenning on October 20th, 1942 (R. 77).

On October 23rd, 1942, Glendenning and Styer amended their petition to the Interstate Commerce Commission, requesting the approval of the purchase of the Styer rights and property by Glendenning, the Glendenning interest having exercised its option prior thereto to purchase said Styer property. A hearing was held thereon on the 31st day of October, 1942.

On October 31st, 1942, the appellants caused to be delivered to Mr. Glendenning, through the mail, a copy of the complaint filed herein. Mr. Glendenning was not named a party to the proceeding and the complaint had not been served upon Mr. Styer, the person named as defendant in said proceeding, and was not served upon Mr. Styer, the defendant, until several days afterwards. The receipt of said copy of said complaint was the first intimation that Mr. Glendenning, or anybody connected with Glendenning Motorways, Inc., had of any intent on the part of the plaintiffs herein to bring this proceeding to attack the Interstate

Commerce Commission's order of October 24th, 1941, and the certificate issued pursuant thereto, held by Mr. Styer (R. 77).

At the time Mr. Glendenning received said copy of said complaint:

(1) He had expended about \$300.00 on a trip investigating the routes and property of Styer (R. 77).

(2) He had expended considerable time and effort on his part, and employees' time, in investigating Styer's rights and property.

(3) He had incurred the expense of employing counsel in the preparation of contracts and petitions for applications to the Interstate Commerce Commission for the approval of the lease, temporary authority to operate, and for the approval of the sale, and attending the hearing before the Interstate Commerce Commission.

(4) He had exercised his option to purchase the property and rights of Mr. Styer and had committed Glendenning Motorways, Inc., to the payment of the sum of \$66,485.00 (R. 30 and 49).

(5) He had on October 20th, 1942, accepted the order of the Interstate Commerce Commission authorizing the Glendenning Motorways, Inc., to operate said Styer's property, thereby assuming the obligation set forth in said contract of September 22nd, 1942, including obligations to creditors of Mr. Styer and the rehabilitation of the property at least to such extent as to carry on efficient operations.

(6) He had expended the sum of \$2,873.00 on the Styer equipment found necessary in the replacement of tires and other repairs to insure reasonable operation thereof.

(7) He had committed said company to the continua-

tion of rehabilitation of the Styer equipment, and had expended up to the time of the hearing of this case the sum of \$11,791.85 in the rehabilitation of said equipment, all of which expenditures were required by obligations entered into before notice of any intention on the part of the rail carriers to bring this action (R. 77).

(8) The obligation of Glendenning to continue to spend money to carry out its requirements under the lease for rehabilitation is continuing, and his obligation to operate is continuing, and notice of this proceeding after the assumption of such obligations in no way relieves him of the said obligations entered into before such notice.

ARGUMENT

I.

Glendenning Motorways, Inc., and Mr. Glendenning Had the Right to Rely on the Certificate of Public Convenience and Necessity Issued Pursuant to the Order of the Interstate Commerce Commission on October 24th, 1941, to Cornelius W. Styer and Dated the 11th Day of July, 1942, and Said Certificate Did Set Forth the Rights of Said Styer, and Said Rights Could Not Be Taken Away Except as Provided by Statute.

Congress clearly intended that the issuance of the certificate of public convenience and necessity issued pursuant to the Motor Carrier Act would create a stable and continuing right so long as the motor carrier holding said certificate obeyed the law, and that any individual or corporation dealing with the holder of such a certificate, either as a buyer or investor in property or as one helping to finance the motor carrier operation by said certificate, could rely on such rights for their protection, subject only to Section 312

of Part II of the Interstate Commerce Act, as follows, to-wit:

"(a) Certificates, permits and licenses shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as herein provided. Any such certificate, permit or license may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may upon complaint, or on the Commission's initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for wilful failure to comply with any provision of this chapter, or with any lawful order, rule or regulation of the Commission, promulgated thereunder, or with any term, condition or limitation of such certificate, permit or license: Provided, etc., * * *"

This provision of the statute seems to be peculiar to the Motor Carrier Act as we do not find a similar statute under the section applicable to railroads. Railroads would appear to not require any certificate of public convenience and necessity until the passage of the Transportation Act of 1920 and that Act simply required a certificate for extension or abandonment of railroads. This Motor Carrier Act is subsequent to the statute authorizing a review of Interstate Commerce Commission orders by an action such as this in the United States District Court.

Congress must have had some definite purpose in including this provision in the Motor Carrier Act. The primary purpose of regulation is to provide better service at reasonable rates to the public. One of the essential factors for a motor carrier to properly serve the public is to have its operating rights definitely determined and perpetual so long as they operate in accordance with the law. This stability of operating rights is the first requisite for the acquiring of capital for the expansion of enterprise, and it would appear that Congress added this provision in furtherance of

the general purpose to be obtained in the regulation of the Motor Carrier Act.

We contend that Glendenning Motorways, Inc., had a right to rely on the certificate of public convenience and necessity and to rely upon this statutory provision protecting the holder of said certificate of public convenience and necessity and that said rights would continue until revoked by the Interstate Commerce Commission after a full hearing upon the same.

II.

Laches.

1. That Glendenning Motorways, Inc., and Mr. Glendenning had the right to rely on the certificate of public convenience and necessity, dated July 11th, 1942.

2. That relying on said certificate, said Glendenning has invested large sums of money in the purchase, operation and maintenance of the Styer rights.

3. That the plaintiffs herein were fully informed of all of the steps taken before the Interstate Commerce Commission and had full knowledge of the laws relative to said proceedings and had full opportunity to proceed upon the issuance of the certificate of public convenience and necessity and, because of their failure to proceed promptly, are now, as a matter of equity, estopped from maintaining this action because of their unexcused delay in laches.

The procedure set forth by the statute is very definite for the establishment of the rights of motor-carrier operators and for the issuance of certificates of public convenience and necessity. They include, first, the filing of a petition with the Commission and a hearing held before Examiners or Joint Boards upon notice being duly given to all inter-

ested parties, and Examiners' report with authority to take exceptions to said report, the filing of briefs, the submission of the issue to the Division of the Commission, and a decision thereby. After a declaration by the Division, then an application for a re-hearing before the full Commission may be had.

All of these steps were taken in the Styer case, the 5th Division order granting the certificate of public convenience and necessity on October 24th, 1941, and the order of the full Commission denying a re-hearing and sustaining the Division order was issued April 6th, 1942. After April 6th, 1942, the carriers had a right to bring this proceeding for the purpose of reviewing the order of the Interstate Commerce Commission issued October 24th, 1941, and the order denying a re-hearing issued April 6th, 1942. The time that elapsed in this particular case, between the issuance of the order of the Commission dated April 6th, 1942, and the issuance of the certificate of public convenience and necessity authorized by said order, is very typical of the time that does elapse in most similar situations. In other words, ample time is actually given for any interested parties to file their complaints, as in this case, before the actual issuance of the certificate, the preparation and filing of the complaint being merely an assembling of papers and documents before the Commission, and all parties connected with the proceedings have full knowledge and undoubtedly have copies in their files or easily available at the Commission.

The stabilizing of the certificate of public convenience and necessity is of vital importance to the shipping public. To provide the essential equipment for substantial operations requires considerable financial backing, and unless investors can have full assurance that the certificate of public convenience and necessity is free from attack, other than as specifically set forth in the statute, motor carriers will be

seriously handicapped and the shipping public unfavorably affected.

In the present case Mr. Styer had to expand his operations due to increased traffic, but was unable to furnish the funds himself and earnings of the operation were not sufficient to produce capital for investment, and Mr. Glendenning, relying on the certificate, came to his rescue and saved not only Mr. Styer's property by putting in sufficient capital to rehabilitate the Styer equipment but to insure efficient operation, which accrued to the benefit of the public.

It is our contention that any delay on the part of the interested parties (such as the appellants herein) in these matters, beyond the reasonable time necessary to file action in Federal Court, is taken at their own risk and subject to possibility that intervening rights and interest may accrue, and that where such intervening rights and interest do accrue, as herein, the parties so delaying will be estopped from prosecuting such a suit as this.

There are no statutory provisions as to limitations of time for bringing this action, or no limitations within which a certificate of public convenience and necessity is free from such an attack as is herein made, unless it could be so construed that the particular provision of the Motor Carrier Act granting to the Interstate Commerce Commission the power to rescind the certificate for cause would bar all other remedies, which we submit is a reasonable interpretation. But aside from that, this authorized statutory action is in fact a part of the procedure outlined by Congress for the determination of the rights involved, starting with the petition of the motor carrier before the Commission for the certificate and ending with this proceeding, and such appeal from the order of this Court is so authorized. It would seem reasonable that where a definite procedure, such as here outlined, for the determination of rights exists, a party to

the initial proceeding before the Commission—a party who has had full knowledge of every step that has been taken—must be in duty bound to take prompt action to have a review of the order of the Commission.

The present case is analogous to those cases where one represents that he owns certain property in the presence of a second party who has a right therein but stands by and says nothing and in the presence of the second party the first party sells the land to a third party. Under these conditions the Courts uniformly hold that the second party after the consummation of sale cannot enforce his claim or rights in the property. In this case the issuance of the certificate and the protection given it by the statute is the holding out to the public that Styer had full rights in the certificate subject to the statute. The plaintiff being fully informed of all the facts in the case allowed this situation to continue four months before commencing this action. (Asserting his right to have the issuance of the certificate reviewed.) Under these circumstances in justice and equity the plaintiff should be estopped from now attacking said certificate to the detriment of a third party who has innocently invested substantial sums on the basis of the certificate.

In actions in the Courts on appeals from orders or judgments of the Court, there is first a limited time fixed, and secondly, a bond is required to protect the respondents from costs resulting from such an appeal. Here we have no such provision, and Courts should be very careful that parties shall be prompt in the exercise of any privilege or right granted by statute for such a review.

Where, as in this case, a third party in good faith has entered into a contract that imposes heavy obligations, and has already expended large sums of money that will be dissipated and lost if the plaintiffs prevail, justice and equity require that the principle of laches be applied, and that the

Court should say that the delay on the part of the plaintiffs of more than six months under the existing circumstances constitutes laches and plaintiffs' rights to review are lost.

III.

Authorities on Laches.

"Laches proceed on the assumption that the party to whom laches is imputed has knowledge of his rights, and an ample opportunity to establish them in the proper forum; that by reason of his delay the adverse party has good reason to believe that the alleged rights are worthless or have been abandoned; and that because of the change in condition or relations during this period of delay, it would be an injustice to the latter to permit him to now assert them."

Gallihier vs. Cadwell, 145 U. S. 368.

"The reason upon which the rule is based is not alone the lapse of time during which the neglect to enforce the right has existed; but the changes of condition which may have arisen during the period in which there has been neglect."

Penn Mutual Life Insurance Co. vs. Austin, 168 U. S. 685, p. 688.

"But it is unnecessary to multiply cases. They all proceed upon the theory that laches is not like limitation, a mere matter of time; but principally a question of the inequity of permitting the claim to be enforced—an equity founded upon some change in the condition or relations of the property or the parties."

Gallihier vs. Cadwell, *supra*.

"The length of time during which the party neglects the assertion of his rights, which must pass in order to show laches, varies with the peculiar circumstances of each case."

Alsop vs. Ricker, 155 U. S. 48, 39 L. Ed. 218.

The case of *Konig vs. Mayor and City of Baltimore*, reported in 97 Atl. 837, is illustrative of the application of the

rule of laches, as applied where there is a decided change of position within a comparatively short period of time, the time being approximately seven months. From that case I make the following quotations:

"In the first place, although his bill was filed April 8, 1914, and an order to show cause answered by the appellees April 21st, nothing was done until November 27th, when a decree *pro confesso* was taken (but no injunction issued) against the American Company, and on November 30th, a general replication was filed. Over seven months and a half thus elapsed before the plaintiff made a move after filing his bill, although he must have known that the contractor was engaged in the performance of his contract and that by the terms of it he was liable to heavy damages, if he did not complete it as required. In *Phelps, Jurid. Eq.*, Sec. 262, it is said:

"There may be laches in the failure to prosecute with diligence a suit actually commenced as well as delay in commencing a suit."

Although we do not mean to intimate that such lapse of time as we have referred to would authorize us to say that the defense of laches could be a bar, time is a circumstance to be taken into consideration in determining the relief to be given as the case is now presented.

"Yet, although the plaintiff did nothing with his suit for over half of the year in which the contractor was required to perform certain parts of the work, he now demands that the contractor get nothing for what he did. If a plaintiff can simply file a bill of this kind, and thus secure the right to such relief as is now contended for, in the event that he ultimately succeeds in having the contract declared invalid, every principle of equity demands that he proceed with diligence."

THE PLAINTIFFS, BEING RAILROADS SERVING THE TERRITORY IN WHICH THE CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY HEREIN INVOLVED AUTHORIZED MOTOR CARRIER SERVICE, ARE BEFORE THE COMMISSION AND ARE IN

THIS COURT FOR THE PURPOSE OF PROTECTING THEIR INDIVIDUAL CLAIM OF RIGHTS AND FOR THEIR OWN FINANCIAL BENEFIT AND NOT FOR THE BENEFIT OF THE PUBLIC IN GENERAL.

Where suits are brought in behalf of the government, the defense of laches is not allowed in the case of a claim which is founded on a sovereign right. 19 *Am. Jurisprudence*, page 342, citing *U. S. vs. Mack*, 295 U. S. 480, but where a suit is prosecuted in the name of the government in behalf of an individual, the action may be barred by laches.

19 *Am. Jurisprudence*, p. 342, citing *U. S. vs. Beebe*, 127 U. S. 338, 32 L. Ed. 121, 8 S. C. 1083.

"Where the United States is only a formal party and the suit is brought in its name to enforce the rights of individuals and no interest of the government is involved, the defense of laches and limitations will be sustained as though the government was out of the case and the litigation was carried on in name, as in fact, for the benefit of private parties."

U. S. vs. Des Moines Navigation Railroad Co., 142 U. S. 510, 35 L. Ed. 1099, 12 S. C. 308.

That in the case before the Court, the right of the appellants to bring the action is solely for their own benefit and not in any regard in the public interest.

"In a suit under this section to set aside an order of the Interstate Commerce Commission the plaintiff is in general subject to the same defenses as any other plaintiff suing in equity."

Baltimore & Ohio R. R. vs. U. S. Dis. Crt., New York, 22 Fed. Supp. 533.

The books are full of a multitude of cases in which the doctrine of laches has been applied by a Court of Equity in order to avoid the doing of serious injury and injustice to third parties; but they all agree that the primary elements are the same, to-wit—that where laches are invoked the party against whom they are invoked must have—

First. Full knowledge of his rights;

Second. Ample opportunity to establish them in a proper forum;

Third. That by reason of his delay the adverse party has given reason to believe that the alleged rights or privileges have been abandoned; and

Fourth. That there has been a change in the conditions or relations during the period of this delay, either in persons affected or in property rights.

All of these factors are present in this proceeding.

SUMMARY

It is respectfully submitted—

(1) That we have clearly shown that Glendenning Motorways, Inc., entered into a contract with Cornelius W. Styer in good faith and after a thorough investigation of Cornelius W. Styer's rights in the certificate of public convenience and necessity that is an issue herein.

(2) That said Glendenning Motorways, Inc., up to the time of trial of this proceeding, had expended approximately \$12,000.00 on the equipment of Cornelius W. Styer, in order to efficiently operate his property under the rights granted in the certificate; that, in addition to these funds actually expended upon the property of Cornelius W. Styer, Glendenning Motorways, Inc., has expended further sums incident to the investigation of the Styer property and in proceedings before the Interstate Commerce Commission to have its contract approved, and further, Glendenning Motorways, Inc., has entered into a continuing obligation to carry on the operation of the Styer property; that none of these obligations are cancelled by this suit, and there are no means or

method in law or in equity, or in this Court, to reimburse Glendenning Motorways, Inc., for its disbursement or in any way to compensate Glendenning Motorways, Inc., for the trouble and obligations it has assumed under the contract entered into in good faith with Cornelius W. Styer.

(3) That the plaintiffs herein, the rail carriers, were fully advised of the order of October 24th, 1941, and of the order of April 6th, 1942, denying a re-hearing on the October 24th, 1941 order, and had all of the facts at their command on April 6th, 1942, to immediately file a complaint such as is filed herein, in order to have a review of the Interstate Commerce Commission order.

(4) That it is a matter of common knowledge, of which this Court should take judicial notice, that motor carriers, as well as rail carriers, require large investments of funds to maintain their operations, and that rights of third parties might arise, either as investors or financiers or as purchasers, and that said investment or interest would be based upon the fact that said certificate had been actually issued.

(5) That with the knowledge of all the facts in the case, and the possibility of other parties acquiring an interest in the Styer operation, any delay on the part of the rail carriers must be at their own hazard of waiving or surrendering their rights of review; and finally—

(6) That the Glendenning Motorways, Inc., is entitled as a matter of right, justice and equity to have this Court make a finding that the appellants herein unduly delayed in filing their complaint for a review of the order of October 24th, 1941, and that where rights are acquired by a third party in good faith, as herein acquired, said third party had a right to rely upon the certificate of public convenience and necessity, and had a right to believe that the rail carriers had abandoned any intent or purpose —

to bring such an action as this for a review of the Interstate Commerce Commission's order authorizing the issuance of a certificate of public convenience and necessity, and that said rights of said third party, Glendenning Motorways, Inc., should be protected, and that said Glendenning Motorways, Inc., is entitled to an order dismissing this proceeding.

Respectfully submitted,

FRED W. PUTNAM,
*Attorney for Glendenning
Motorways, Inc., Appellee.*

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 482.

CHICAGO, SAINT PAUL, MINNEAPOLIS AND OMAHA RAILWAY
COMPANY, ET AL.,

Appellants,

v.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE COM-
MISSION; AND CORNELIUS W. STYER, DOING BUSINESS AS
NORTHERN TRANSPORTATION COMPANY,

Appellees,

and

GLENDENNING MOTORWAYS, INC.,

Intervener-Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MINNESOTA.

**BRIEF FOR APPELLEE, CORNELIUS W. STYER
Doing Business as Northern Transportation Company**

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BRIEF FOR APPELLEE, CORNELIUS W. STYER
Doing Business as Northern Transportation Company

**CORRECTIONS AND ADDITIONS TO APPELLANTS'
STATEMENT OF THE CASE**

We make the following corrections of certain inaccura-
cies and omissions in appellants' Statement of the Case:

1. On page 5, it is said:

"Styer offered no evidence as to any operations dur-
ing the 'grandfather' period from any Minnesota point
to any Minnesota point."

Styer offered evidence of bona fide operation during the "grandfather" period over the whole of each of the three routes involved and including all intermediate points on each route. The Commission found that Styer was in bona fide operation on June 1, 1935, to and from these intermediate Minnesota points. Whether the evidence sustains that finding is one of the principal issues of the case.

2. On page 5, appellants also say:

"Styer made the claim through counsel, and testified and presented evidence in support of such claim, that his eastbound 'grandfather' operation from South Dakota to Minnesota consisted of an irregular route operation to widely scattered Minnesota points, none of which were on the regular 'grandfather' routes granted by the Commission" (R. 97-98, 102-106).

The statement conveys the erroneous impression that the eastbound irregular route operation was the *only* eastbound operation claimed. Later appellants so argue.

Styer made claim to two types of operations. The first was the ordinary regular route operation over three routes with Minneapolis and St. Paul, Minnesota,¹ the eastern-most terminus, and Mitchell, South Dakota, the western terminus, serving all intermediate points on the routes in both Minnesota and South Dakota, both westbound and eastbound.

The second operation claimed was characterized by Styer as an "irregular route" or "territorial" operation from a large area in South Dakota to any point in a described territory in Minnesota. Styer claimed he was entitled to a certificate authorizing *both* types of operations, viz., regular route and "irregular route" or "territorial." Contrary to appellants' statement and later argument, he did not claim that his eastbound operation was solely territorial in nature nor

¹Hereinafter called the Twin Cities.

did his claim *exclude* the eastbound movement upon his *regular routes*.

The Commission found that he was in bona fide regular route operation, including all intermediate points, in both directions, i. e., eastbound and westbound, stated that his eastbound irregular route operation was such that it might be warranted in granting irregular route or territorial authority. Because, however, after June 1, 1935, his eastbound operations of an irregular route nature had evolved into a regular route operation in the main, the Commission denied the irregular route authority.

3. On page 5, appellants state that they filed a petition for reconsideration of the order of Division 5 of the Commission. For purposes later appearing, we ask the Court to note that appellants did not ask the Commission for a further hearing or for a rehearing, which, if requested and meritorious, would have been granted. It is our point that appellants cannot now complain they have been denied a "full and fair" hearing (page 13, Appellants' Brief) when, with opportunity provided by the Commission's rules, they might have received it.

4. Both Appellee Styer and the Intervener, Glendenning, pleaded and submitted evidence to the lower Court in support of the claim that appellants, by their delay in bringing this action for seven months after the Commission's denial of their petition for reconsideration, during which time a certificate of public convenience and necessity had been issued to Styer and Styer had sold his business and rights to Glendenning for \$66,000.00, are guilty of laches fatal to their claim here.

In connection with that issue, we add the following to the Statement of the Case:

Pursuant to the "Agreement of Lease," including option

for sale later exercised by Glendenning, and pursuant to the applicable statute requiring Interstate Commerce Commission approval of the transfer of the certificate and properties, Styer and Glendenning applied to the Commission for approval of that transaction.

Hearing upon that application was held before the Commission's Examiner on October 31, 1942, two days before the service of a summons in this case upon Styer. Neither Glendenning nor Styer had any knowledge of this action heretofore.

On March 13, 1943, and while this case was pending before the lower Court after trial, the Commission, in its order of that date (R. 80), found that the sale by Styer to Glendenning was consistent with the public interest (R. 88) and entered its order for approval.

The lower Court, sustaining the Commission's order for other reasons, found it unnecessary to consider our plea of laches. We may urge it in this Court upon the authority.

U. S. vs. American Ry. Express (1924), 265 U. S. 425, 68 L. Ed. 1087.

It may assist the Court to here identify by numbers the routes described on the maps—Styer Exhibit Nos. 1 and 2 (R. 126-A, 90) and the map attached to the appellants' brief. Throughout the Commission's and lower Court's decisions, the routes involved herein are designated as Routes 1, 2 and 3. These route numbers may be identified by reference to the Commission's decision (R. 8, paragraph 2) and Appendix (R. 16 and 17). For purposes here, it is sufficiently accurate to say that the topmost route appearing on the maps running west from the Twin Cities to Huron, South Dakota, and thence south to Mitchell, South Dakota, is Route No. 2.

Route No. 1 is the "middle" route extending west from the

Twin Cities duplicating Route No. 2 as far as Winthrop, Minnesota, extending south from Winthrop to New Ulm, Minnesota, thence west through Brookings, South Dakota, to Huron, South Dakota, and thence south to Mitchell, South Dakota.

Route No. 3 is the route appearing nearest the bottom of the maps, extending from the Twin Cities south through Mankato to Fairmont, Minnesota, thence through Sioux Falls, South Dakota, to Mitchell, South Dakota.

SUMMARY OF ARGUMENT

"In the 'Grandfather' Case."

1. There was evidence fully sustaining the Commission's finding and conclusion that Styer was in bona fide operation on June 1, 1935, over the whole of the two regular routes, Nos. 1 and 2, including the intermediate points in Minnesota, thus satisfying the statutory command.

2. As to eastbound operations from South Dakota points to Minnesota points, the evidence clearly shows that Styer was in bona fide operation over the whole of Routes 1 and 2 as a *regular route operator*, serving both eastbound and westbound, and to and from all intermediate points on said regular routes without reference to whether such intermediate points were in Minnesota or South Dakota; that *in addition* to such full regular route operation, Styer claimed that he was operating both an *additional* South Dakota origin territory and an *additional* large Minnesota territory embracing points of origin and destination not located on his regular routes. This *additional* operation Styer himself characterized as an "irregular route" or "territorial" operation and claimed that his certificate, *in addition to regular route operations to and from all intermediate points in both direc-*

tions, should also include the authority for this "territorial" operation. Whether, under the facts, this portion of his eastbound operation was of the character Styer ascribed to them, was for the Commission to say. The Commission said that these eastbound irregular operations, separate and apart from the eastbound on his regular routes, were, in the early stages, of an irregular route or a territorial nature but that the evidence of his operations since the "grandfather" date showed transportation, in great part, between points upon his regular routes only. The Commission thus denied his claim to irregular route authority and granted, and properly so, the regular route authority to serve all intermediate points both westbound and eastbound.

3. The Commission's disregard of the stipulation of the parties was fully within its power under Section 208 (a), and, at all events, the parties to a proceeding involving the public interest, here a public transportation service, could not so tie the hands of a public regulatory body.

4. Even absent evidence of shipments to these intermediate route points, the statute empowers the Commission to authorize service thereto under Section 208 (a), U. S. C. 49, 308 (a).

5. Appellants are guilty of laches. They inexcusably delayed assertion of their action for seven and one-half months after the denial of their petition for reconsideration by the Commission. During the delay and after the issuance of a final certificate to Styer, Styer sold his business, properties, and the rights in question to Intervener Glendenning for some \$66,000.00. Styer and Glendenning changed their positions during the delay such that an adverse decision here would produce inequity and injustice.

ARGUMENT

There was evidence fully sustaining the findings and decisions of the lower Court and of the Commission holding that Styer was in bona fide operation on June 1, 1935, to and from the intermediate route points lying in Minnesota.

The Lower Court's Findings and Decision Upon This Issue.

The determining portions of the lower Court's findings and decision are not fully quoted by appellants. They are:

"4. There was no evidence adduced before the Commission that prior to June 1, 1935, Styer had transported any commodities to or from intermediate points in Minnesota on routes 1 and 2. The evidence was that prior to that date Styer had transported commodities from the Twin Cities (St. Paul and Minneapolis) in Minnesota to Huron and Mitchell in South Dakota over routes 1 and 2, had served intermediate points in South Dakota thereon, and had transported commodities from South Dakota points to points in Minnesota which were not on routes 1 and 2.

"5. There was evidence before the Commission sufficient to justify the inference that prior to June 1, 1935, Styer was able to serve intermediate points in Minnesota on routes 1 and 2, and had held out service to such points" (R. 66—Findings of Fact).

In its decision, the lower Court said:

"The broad question which the Commission was required to determine in the 'grandfather' proceeding was: What grant should be made to Styer under the 'grandfather' clause of §206 (a), in order to assure him a substantial parity between his future operations and his prior bona fide operations? See *United States vs. Carolina Freight Carriers Corp.*, 315 U. S. 475, 481. The Commission was not compelled to limit Styer to the exact pattern of his operations prior to June 1, 1935, and, in determining the scope of his 'grandfather' rights, it could take into consideration the service which he was

offering, as well as that which had actually been performed by him, prior to that date. *United States vs. Carolina Freight Carriers Corp., supra*, pages 483-484" (R. 61).

And again:

"It must be true, however, that the Commission, in determining the nature and extent of the 'grandfather' rights of a carrier in a particular case, is not required to do so with mathematical precision, and that, within reasonable bounds, its estimate of the character and scope of the carrier's bona fide operation on and prior to June 1, 1935, must be accepted by the courts, which cannot substitute their judgment for that of the Commission" (R. 62).

The Court then quoted the Commission's long established rule:

"The Commission has, in effect, ruled in similar proceedings that proof of actual operations as a common carrier to and from termini and some intermediate points on a regular route, coupled with evidence of a holding out of service and of a willingness and ability to serve all points on the route whenever shipments are offered, will justify a finding of bona fide operation to and between all points on the route. See *Nevitt Common Carrier Application*, 4 M. C. C. 298, 299-300; *Consolidated Freight Lines, Inc., Common Carrier Application*, 11 M. C. C. 131, 136; *Knaus Common Carrier Application*, 20 M. C. C. 669, 671; *Los Angeles-Seattle Motor Express, Inc., Common Carrier Application*, 24 M. C. C. 141, 145; *Tarbet Common Carrier Application*, 31 M. C. C. 63, 66-67. In the instant case, it is apparent that the Commission regarded the proof of actual service between termini and to intermediate points in South Dakota, together with the evidence which tended to prove that Styer was offering and was able to serve intermediate points, whether in Minnesota or South Dakota, on the 'grandfather' routes, as sufficient to justify the grant which it made to Styer. Proper deference must be paid to the Commission's interpretation of the law which it enforces, *Gregg Cartage & Storage Co. vs. United States*,

316 U. S. 74, 88, and, if there is any warrant in the record for the judgment of the Commission, it must stand. *Rochester Telephone Corp. vs. United States*, 307 U. S. 125, 145-146. We think that the Commission's determination that Styer was entitled to the rights granted because of his bona fide operations as a common carrier on and prior to June 1, 1935, did not amount to an abuse of power" (R. 62 and 63). (Our emphasis.)

The above are the principles invoked and applied by the lower Court upon the issue of the nature of the evidence which warranted the granting of authority to serve the intermediate points upon these routes. Whether the points lay in Minnesota or South Dakota was of no consequence.

Upon the same issue, the Commission found:

"When applicant started his own operation he utilized two trucks. On April 9, 1935, he added two tractor and semi-trailer units. On June 1, 1935, he operated no other equipment. There is no doubt that applicant transported commodities of a general nature between Minneapolis and St. Paul, hereinafter called the Twin Cities, within which term we shall also include South St. Paul, Minn., on the one hand, and, on the other, Brookings, Huron and Mitchell, S. Dak." (R. 9, Commission's Report).

The above findings substantiate the Commission's grant of authority to transport between the *termini* of Styer's routes. This finding is not attacked, hence virtually conceded.

Upon the question of intermediate point service upon Routes 1 and 2, the Commission found:

"Prior to June 1, 1935, applicant served the intermediate points on routes 1, 2, 4 and 5 of Brookings, Iroquois, Forestburg and Madison. Applicant does not claim the right to transport interstate shipments from the Twin Cities to points on his routes in Minnesota, but claims that such points were served eastbound from South Dakota. Although the proof of service at intermediate points on the above routes is not impressive,

when considered in connection with the fact that operations by applicant were instituted only 2 months prior to the statutory date and the testimony of applicant that he did not limit his service to terminal points but held out service at all intermediate points and actually solicited such business, we are convinced that he should be authorized to serve all intermediate points on routes 1, 2, 4 and 5, and that a restriction to serve certain intermediate points in one direction only would make the authority granted unnecessarily complicated and it will not be imposed" (R. 10 and 11, Commission's Report).

The correctness of the findings of the Commission and of the lower Court that Styer should be authorized to serve intermediate points on these routes in *South Dakota* is not questioned and hence virtually conceded.

With respect to the remaining intermediate points, those lying upon the routes in Minnesota, the Commission took a realistic view of the facts. It recognized that on April 1, 1935, two months prior to the "grandfather" date and at the threshold of his venture, Styer designed and projected a business which encompassed operation over the whole of these routes with service to and from all points thereon, terminal and intermediate. The Commission found that he did not limit or confine his proffered service to terminal points. It found that he held himself out to serve all intermediate points and actually solicited business to and from such points.

The Record Upon This Issue and Argument Thereon.

This finding is amply supported by the record. Styer testified:

"Between April 1 and June 1, 1935, my facilities were such as to permit carrying shipments to the intermediate points not covered by Exhibit 3. There was actual space in my trucks which would have allowed me to ac-

cept, carry and deliver shipments to these intermediate points had I received any during the period prior to June 1, 1935. Never at any time did I intend or offer to the public simply a non-stop operation between the Twin Cities and Huron prior to June 1, 1935" (R. 93).

Styer's statement concerning the intermediate points "not covered by Exhibit 3" was meant by Styer to include *all* intermediate points on all routes—even though those points were not named in Exhibit 3. Exhibit 3 (R. 131-132, 127) covers the period from April 1 to October 15, 1935, and sets forth in great part South Dakota points. The "partial abstract of Exhibit 3" (R. 132) sets forth the Minnesota points served during that period. His statement that he had space to carry any proffered shipments "to or from intermediate points" not covered by Exhibit 3 refers to other intermediate points not named in Exhibit 3 whether in South Dakota or Minnesota. The points not there named, of necessity, included all South Dakota and *Minnesota* intermediate points not there set forth.

At no time did Styer offer or intend to offer "simply a non-stop operation." A non-stop operation implies an operation between terminals only, not to, from, or between intermediate points on the routes.

And again:

"The drivers were instructed to solicit business from *all* towns through which they passed, to solicit freight in *either* direction" (R. 94). (Our emphasis.)

"On and prior to June 1, 1935, I solicited business for intermediate points on the regular routes I operated over. I contacted personally quite a few shippers" (R. 92).

"It was my purpose from the beginning to solicit and render service to the intermediate points. What I attempted to do was get a truck service comparable to that that Crabb had been giving. It was a daily service to a number of points in South Dakota; to any of the points along the routes. We accepted any freight we were able

to get from the time we started. We solicited freight for all points along the route. Because of the various contacts at some of these towns, we got much more freight there. I was born at Huron and was well-acquainted there and consequently Huron developed faster than some of the other points, but at no time did we turn down freight for any of these points along the routes in South Dakota. I am referring to the towns shown by Exhibit 5" (R. 93).

All of his sworn testimony stands uncontradicted.

To us it has always been perfectly clear that Styer, in this testimony, was referring to *all* intermediate points and without reference to whether those points lay in South Dakota or Minnesota. There were, as a matter of fact, some small South Dakota points which were not named in Exhibit 3 and which, prior to the critical date, he had not served. He had not "served" them in the sense that he had not picked up or delivered a shipment at or to such points. In his testimony there was no occasion for him to distinguish the intermediate point operation as between South Dakota and Minnesota points.

At all events, there is not one word in such testimony indicating that he was referring to South Dakota points only or, conversely stated, that when he said "intermediate points" he was *excluding* the Minnesota points upon his regular routes. He was, of course, referring to intermediate points upon all three routes. He was making no conscious distinction between Minnesota intermediate points and South Dakota intermediate points. When he said prior thereto that he solicited business for intermediate points on his regular routes "that I operated over" (R. 92), he was not referring, even by inference, to South Dakota or Minnesota intermediate points singly. He was referring to both. When he instructed his drivers to solicit business "*at all towns through which they passed * * ** in either direction" (R. 94), he was making no distinction concerning the state

in which such intermediate points lay. He meant precisely what he said, viz., *all* intermediate points upon the routes, whether in Minnesota or South Dakota. He was engaged in interstate commerce and so far as his business was concerned, it made no difference whether the revenues originated at or out of a Minnesota or South Dakota intermediate point.

Nevertheless, out of this testimony, appellants would have the Court believe that Styer was there referring, when he mentioned "intermediate points," to South Dakota points only and to the utter exclusion of Minnesota intermediate points. We submit that there is no basis in the ordinary interpretation of the English language for such argument and when all other facts and circumstances are considered, no basis or reason exists for such a position.

Appellants seek to interpret his testimony so as to leave the inference that he was attempting to emulate Crabb's service and that Crabb's service embraced South Dakota points only. (From the Twin Cities.) Actually no special or other inquiry was made as to whether Crabb's service embraced Minnesota and South Dakota points or South Dakota points only. It is true that Styer speaks of Huron, South Dakota, as the point where his business developed more rapidly than elsewhere—a natural statement in view of not only the fact of the matter but because also he was talking about South Dakota points as well as Minnesota points.

None of these isolated remarks upon which appellants seem to hang much of their case can overcome the effect of the general statements of Styer which, of necessity, contemplated *all* intermediate points whether in Minnesota or South Dakota. When at the outset of the quoted testimony that he says it was his purpose to "solicit and render service to intermediate points," there is nothing in this record before or after which would warrant the argument that he was re-

ferring to South Dakota points only and to the exclusion of Minnesota points. At a later point in the testimony he said:

"We accepted freight for all points along the route" (R. 93); that his facilities were such that he could accept, carry and deliver shipments to "intermediate points not covered by Exhibit 3."

The argument in our favor is crowned by his last statement that at no time did he intend or offer "a non-stop operation" meaning to the exclusion of all intermediate points.

If there should be any doubt about the proper interpretation of this testimony, the lower Court wisely and in accordance with proper principles of the law, said:

"The Commission was free to place its own interpretation upon his testimony as to the extent of the service tendered" (R. 60).

The lower Court states that it was "probable" that Styer might have been referring to South Dakota points only because "his tariffs apparently covered no other intermediate points on his routes" (R. 60).

The Court, however, clearly resolved the matter by stating in substance that the Commission must be free to weigh the evidence and that the Commission's estimate of the character and scope of the operation within reasonable bounds should be accepted by the Courts.

We believe that the Court was influenced by a fact that the Commission more fully understood and appreciated. The "tariffs," of which the Court speaks, was not a tariff in the present day sense. The time was before regulation. The Court's reference is to Exhibit 5 (R. 134, 93). This exhibit was merely a card which contained the names of certain South Dakota towns and rates thereto from the Twin Cities only. It was "used by J. W. Crabb for service into South Dakota" (R. 93), before Styer started into business² (R.

²Styer had previously worked for Crabb.

93). It was circulated by Styer's Twin Cities terminal connection—The National Truck Terminals, Inc. This terminal company furnished dock space, pick-up and delivery service, and solicitation to and for all carriers connected therewith. The card (Exhibit 5) was, of necessity, circulated by that terminal company, on behalf of Crabb and Styer *among Twin Cities shippers*. Neither Crabb nor Styer had intrastate rights in Minnesota and could not transport shipments from the Twin Cities destined to a Minnesota point. They could accept, in the Twin Cities, only shipments which moved into South Dakota or shipments received by them from connecting carriers at the Twin Cities, which shipments originated without the state of Minnesota and were destined either to Minnesota points or to South Dakota points.

Twin Cities shippers, therefore, amongst whom this card was circulated, could ship South Dakota shipments only over Styer's line. Clearly, therefore, there was no reason why Crabb or Styer should circulate in the Twin Cities a card naming Minnesota points intermediate upon their routes. Such effort could have gotten them no business because they could not have accepted the shipments because of lack of intrastate authority to do so.

Styer solicited "various truck lines serving points east of the Twin Cities" (R. 94). East of the Twin Cities included Chicago, Milwaukee, Akron, Ohio; Oshkosh, Wisconsin; New Haven, Connecticut; and many others appearing in Exhibit 3 (R. 127).

The Commission, we submit, with its daily acquaintance with this type of fact situation, was in much better position than the Court to understand and evaluate the significance of the circulation of Exhibit 5. Its circulation had little, if any, bearing upon the interpretation to be placed on Styer's testimony, viz., whether he was talking about South Dakota points only or whether he was talking about all in-

intermediate points upon the routes. The inclusion of Minnesota intermediate points upon such card would have been meaningless.

Thus, the Commission had ample basis in the record to find that Styer had been but two months in business, did not at any time limit his service to terminal points and had held out service to all intermediate points, including Minnesota points, and had actually solicited such business. In the short space of time between the beginning of his venture and the "grandfather" date, he could not reasonably be expected to have initiated actual shipments to or from all intermediate points on his routes (R. 92). The absence, however, of shipments to these intermediate points makes him nonetheless a carrier thereto—nonetheless in bona fide operation thereto. It may well be that the Omaha Railroad passes through Podunk, Minnesota, for two months without picking up or delivering a shipment yet no one can contend that the railroad was not in bona fide operation to that point. It was ready, willing and able to serve it and held itself out to do so and would stop there tomorrow to deliver a shipment. The principle here is not different. They are both public carriers.

The Commission's Rule and Reasons Therefor.

The lower Court announced and applied the rule the Commission has long followed respecting the "grandfather" authority respecting intermediate points upon a regular route.

Where proof of bona fide operation between termini and some intermediate points is, as here, undoubted, the Commission has viewed the applicant's operation as an endeavor to serve a route. Significantly in the "grandfather" clause itself, Section 206 (a), the statute speaks of routes—not points.

The reason for the Commission's position is well stated in *Tarbet Common Carrier Application*, 31 M. C. C. 63, at 66 and 67. In that case the applicant could show no transportation during the "grandfather" period between St. Louis, Missouri, and Indianapolis, Indiana, a segment of the longer route from Muncie, Indiana, to St. Louis. The applicant, however, rendered a daily service from Muncie and St. Louis through Indianapolis. The Commission said:

"To require an applicant under the 'grandfather' clause to prove service between every combination of points sought in the application would not only prove an insuperable burden but would result in restrictions which would choke the development of motor carrier operations over the routes which a carrier serves, and thus prevent the development of an efficient and economical transportation system contrary to the national transportation policy as expressed in the Act. We are of the opinion that such restrictions should not be imposed."

The wisdom and justice of this rule is hardly to be argued. It was not the intent of Congress under the "grandfather" clause that the Commission should be compelled to grant certificates authorizing service only to those intermediate points to or from which a carrier could produce a receipted freight bill evidencing such transportation. If that rule prevailed, transportation chaos would result. It would mean that carrier Jones would be authorized to serve points A, C and D—all on the same route; that carrier Smith, operating over the same highway, would be authorized to serve points B, E and F, and that carrier Brown could serve points G and H—all on the same highway. Such a pulverization of "grandfather" rights is far beyond the intent of Congress. We cannot easily imagine a railroad carrier service which stops at every other point only, even though its trains pass through them daily.

The Commission also refused to impose a "one-way" service to these intermediate Minnesota points and this notwithstanding Styer's claim or stipulation (R. 11). The lack of transportation efficiency in a "one direction" movement is apparent. It promotes the ultimate in transportation waste. In these days of scarcities of gasoline, tires, steel, etc., or at any time, such restrictions do not make transportation sense. Most important of all the restrictions here contended for by the appellants run counter to the national transportation policy. An efficient and economical transportation system cannot be achieved by imposing restrictions which prevent good public service. It is the Commission's duty, under the policy, to promote the inherent advantages of motor transportation service—not to deny them.

The exercise of the discretion to impose or refuse to impose all such restrictions is for the Interstate Commerce Commission. It is the exercise of an administrative discretion. It will not be disturbed by the Commission so long as the Commission stays within the bounds of its statutory powers.

Rochester Telephone Corp. vs. U. S., 307 U. S. 125, 59 Sup. Ct. 754.

Kansas City So. Ry. Co. vs. U. S., 231 U. S. 423, 58 L. Ed. 296.

U. S. vs. Carolina Freight Carriers Corp., 315 U. S. 475.

Federal Radio Commission vs. Nelson Bros., etc., 289 U. S. 266, 276, 277, 77 L. Ed. 1166.

Response to Appellants' Argument.

The question of bona fide operation is one of fact and the conclusion must be drawn from all of the facts or circumstances of the case. Appellants disregard this view and seek to isolate certain of the Commission's statements and build an argument thereon.

Appellants say (page 17) that the Commission stated that the proof of service at intermediate points was "not impressive" and then point out that there was no proof of any "service whatsoever" to intermediate Minnesota points, either westbound or eastbound, prior to June 1, 1935. There were shipments from South Dakota points to Redwood Falls and Marshall, Minnesota, on Route 2 during the "grandfather" period for which Styer had no bills or manifests (R. 105). Styer explained the reason for the absence of these bills (R. 99).

Appellants' statement that there was no proof of service to these intermediate points ascribes a meaning to the word "service" which we deny. By "service" to a point, appellants apparently mean to say that the proof must show a pick-up or delivery of freight to an intermediate point in order to sustain "grandfather" rights. The Commission's statutory duty here is to determine whether an applicant was in bona fide operation over the route. We do not agree that proof of bona fide operation must rest solely in a showing of the actual receipt or delivery of freight at a certain point. In the sense made pertinent by the statute, Styer was in bona fide operation to all such intermediate points.

Appellants further claim that there was no evidence that Styer held himself out to serve these intermediate points (page 17). We shall not here repeat the testimony concerning solicitation by Styer and his truck drivers at these points and in both directions. This is the purest kind of holding out.

Appellants further claim that Styer testified concerning this solicitation before he amended his application to exclude the Minnesota points. They urge that his "direct testimony specifically disclaimed any 'grandfather' rights to serve west-bound intermediate points" (page 17). Styer did not, by direct testimony, *disclaim* such "grandfather" rights, and appellants do not point to the record where such may be found. He did not, at a later period in the testimony, deny or qualify any of his previous statements of facts. In short, his later amendment did not deny the facts concerning solicitation or holding out. No such earlier testimony was ever later repudiated, as appellants claim (pages 18 and 19).

Appellants argue that Styer's holding out to serve these intermediate route points without a showing of transportation of shipments to or from such points runs afoul of the principles announced in *McDonald vs. Thompson*, 305 U. S. 263, 266, wherein the Court held that the bona fide operation contemplated by the Act required a showing of actual service rather than potential or simulated service, and that a showing of mere ability to serve was insufficient. The principle is mentioned in subsequent cases.³ None of the prior decisions bear upon the fact situation here present. In each of them, the "grandfather" carrier was an "irregular route" or "territorial" carrier, handling special commodities requiring special transportation treatment. The instant case, in the respect under discussion, deals with regular routes and the transportation of general commodities in a manner similar to railroad carriage. The prior decisions deal with a different kind of service than here presented.

Further, the principle cannot apply in the instant case because Styer's trucks physically operated through these intermediate points daily. In the cited case (*McDonald v.*

³*Alton R. Co. vs. United States*, 315 U. S. 15; *U. S. vs. Carolina Freight Carriers Corporation*, 315 U. S. 475, 15 U. S. Sup. Ct. Rep. 722; *Loving vs. United States*, 32 Fed. Supp. 464.

Thompson, supra) and others, the claim of bona fide operation was unsupported and unaccompanied by any actual physical operation of the equipment in or out of the involved territories during the "grandfather" period. Styer did something more than to merely claim orally that he was entitled to serve these intermediate route points because he held himself out. There was an actual physical movement of the trucks through these points. He had initiated a route service, and his trucks moved over the routes and through these points daily. The service was present and the mere failure to have been tendered a shipment does not disprove its availability.

Appellants also argue that mere physical operations through these intermediate points is insufficient to establish "grandfather" rights, citing two Commission cases. In the *Gill* case, 29, M. C. C. 475, Gill proved undoubted bona fide operation between terminal points. Because the "grandfather" clause provides for a certificate to a carrier if he was "in bona fide operation over the route or routes within the territory claimed," Gill then contended that he had established a route and that under the statute the Commission was compelled to grant him all intermediate points without proof of service to them or intention to do so. The Commission directed attention to Section 208 (a) which requires the Commission to specify in certificate "intermediate points, if any" and said,

"In our opinion, we are clearly directed to determine what intermediate points an applicant under the 'grandfather' clause should be authorized to continue to serve, depending on the facts in the particular case, and this has been our consistent practice" (476).

The cited case establishes no rule except that each case must be determined upon its own particular facts and circumstances. The conclusion is to be drawn from all the facts

of the case. In the instant case the "mere physical operation" through these intermediate points was accompanied by the launching of business in the first instance which embraced all points upon the routes involved. Such was not present in the Gill case.

Denver-Chicago Trucking Company, C. A. A., 27 M. C. C. 343, cited by appellants, is not applicable. There the applicants had, in a prior informal proceeding, claimed certain points in Illinois and Iowa as intermediate points upon the route between Chicago and Denver. At the hearing, however, they admitted that they had abandoned all service over the routes upon which these points were located. At the hearing they sought to be authorized to serve these points as "off route" points. The Commission denied the authority, first, because appellants have served them in the past as intermediate points upon routes now abandoned, and, second, because they were too far removed from the principal Chicago to Denver route to be properly considered "off route."

Appellants further argue that authority to serve these intermediate points would "vastly increase" the operation he was conducting on the "grandfather" date, thus increasing competition to them. This is claimed to be contrary to the claim to this Court in *Crescent Express Lines, Inc., vs. U. S.*, 88 L. Ed. Adv. 143. Parenthetically, it would be somewhat difficult to imagine that a beginning truckline, hauling LCL freight only, is in serious competition with these large railroads. The answer, however, is that the Commission's order does not increase operations not existing on the "grandfather" date. The "operation" over the routes was conceived by Styer in good faith on April 1, 1935. At that time he launched his project and was transporting freight daily over these routes for the two months preceding June 1, 1935. In other words, on June 1, 1935, the operations of which the appellants complain were existent and had been in operation

for the two preceding months. On June 1, 1935, Styer had already established himself as a "railroad competitor." The Commission's order did not permit him to *increase* competition except in so far as any competitor may increase his tonnage or revenues from the business upon the route already established. This, of course, is favored by the Act because Congress provided that the Commission should not attach any limitations to certificates which would restrict the carrier's right to add to his equipment and facilities as the development of his business and the demands of the business required. Section 208 of the Act, 49 U. S. C., Section 308.

Eastbound Operations.

Applicant's entire argument upon this issue is based upon two false premises.

The first, contrary to appellants' statement, (page 23) is that Styer's evidence did *not* show that "the *only* eastbound service he was holding out or rendering during the 'grandfather' period was an irregular route service to many widely scattered points in Minnesota, etc." (Our emphasis.)

On April 1, 1935, Styer indisputably launched operations over three regular routes. The service he contemplated and thereafter performed was both westbound and eastbound. Moreover, operations over "regular routes," unless specifically restricted, imply transportation in both directions. The Exhibit 3 shows that Styer transported traffic in both directions prior to the "grandfather" date. (Exhibit 3, R. 90—R. 127, 128, 90.) For example, the first shipment shown on Exhibit 3, in April, 1935, is Minneapolis to Mitchell, South Dakota. The third shipment is Mitchell to Minneapolis and so on throughout the exhibit. For the two months prior to June 1, 1935, Exhibit 3 shows that Styer transported twenty-four shipments eastbound from Huron to Minneapolis and

St. Paul or South St. Paul (the Twin Cities area), and twenty shipments from Mitchell eastbound to the same Twin Cities area. This constitutes almost one shipment per day moving east to the Twin Cities area only—exclusive of other Minnesota points of destination.

The above represents admitted and undisputed movements of traffic eastbound between points on regular routes. The westbound transportation is more voluminous and is not attacked.⁴ Both establish regular route operations in both directions.

Appellants attempt to read Styer's eastbound *regular route* movement out of the case.

The facts, the actual transportation performed, show movements over the routes and between route points in both directions and thus dispose of the argument.

The statement of claims appearing in the colloquy of counsel (R. 97) is to the same effect.

"Mr. Janes: But do you claim rights in South Dakota, when you pick up commodities in South Dakota, to deliver those commodities in South Dakota to points in Minnesota *on those routes?* (Our italics.)

Mr. Moore: Yes."

An understanding of the facts can leave no confusion concerning either eastbound regular or irregular route service.

One of Styer's problems was that of "balanced traffic," i. e., equal loadings in both directions. The westbound traffic predominated (From the Twin Cities). (R. 103 and 190.) To avoid and lessen empty eastbound mileage, it was necessary that, *in addition* to his route points in South Dakota, he establish a larger South Dakota area as an *origin* territory for the movement of goods eastbound into Minnesota. This South Dakota to Minnesota traffic moved to a

⁴Shipments vary from a few hundred pounds to a few truckloads at one time (R. 191).

large number of Minnesota points between, on, and off his regular routes (R. 190 and 191). He named some twenty-seven points in Minnesota to which he had delivered shipments originating in this South Dakota area (R. 125). The goods included potatoes, farm produce, canned goods, construction machinery and supplies, building supplies and materials, printing presses and household goods (R. 11, Commission's order).

Speaking of Minnesota as a destination territory, he said, "We wanted it as a territory to be operated *in conjunction* with our regular route operations" (R. 104). (Our italics.)

The lower Court quoted Styer's testimony in full. We reproduce it here in part only:

"I claim to have a regular operation and an irregular operation in Minnesota * * * I claim to have regular and irregular operations of general commodities. The regular operation as indicated by the routes shown on this map are the routes over which our trucks go daily and that service is given. * * * The irregular operation, for example, would be a shipment for Albert Lea (Minn.) where we would not go unless we had a shipment. In that nature it is irregular. The regular operations are more or less on a fixed time schedule. That is the bulk of our operations. The irregular operation is only supplemental to our principal operation. It is principally for back haul out of South Dakota" (R. 58, 59).

Mr. Styer further stated, "It is my contention that prior to June 1, 1935, and between June 1, 1935, and April 1, 1935, I transported shipments from South Dakota to points and places in Minnesota or from points and places in Minnesota other than the Twin Cities to South Dakota" (R. 99, 100).

At the time of his application and upon the hearing before the Commission, he believed that the nature and scope of his total operations were such to entitle him to a certificate (1) as a regular route carrier between all points on his routes,

whether in Minnesota or South Dakota, (2) and, in addition, as an irregular route carrier between points and places in a South Dakota territory and between points and places in a large Minnesota territory. The Commission held that his irregular route or territorial authority might be properly granted under the evidence, but that the proof of his operations since June 1, 1935, showed that his South Dakota to Minnesota business had evolved considerably into traffic between the points on his routes. The regular route authority granted would, therefore, more nearly fit his then operations.

The Commission recognized, without effort, that the irregular route operations Styer claimed to have were in addition to the regular route operation. In its order (R. 11) after disposing of the question of regular routes and intermediate points thereon, it said,

"In addition to the operations conducted over regular routes described above, applicant also claims to have been engaged in the transportation of general commodities over irregular routes between points in that part of South Dakota described in his South Dakota application on the one hand and on the other, points in Minnesota" (R. 11). (Our italics.)

When it is made clear that Styer was claiming, and believed he was proving, two types of operation, entitling him to both types of authority, the Commission's order withstands appellants' attack. The Commission properly granted regular routes with service in both directions. Styer asked for irregular route authority between points and places in Minnesota and South Dakota located in "territories" and lying beyond his regular routes in both states. The Commission denied him the irregular route authority.

Thus appellants' argument is based upon false premises. The eastbound irregular route operation was not the only eastbound service performed.

The result therefor of which appellants complain, does not exist. There was no conversion of an irregular route operation into a regular route operation. The latter existed independently of the claimed irregular return or eastbound movement. Under these facts, there can be no conflict with the *U. S. vs. Maher*, 307 U. S. 148. Maher conducted an irregular route service during the "grandfather" period, filed his application, thereafter abandoned that type of service, and without authority commenced a new and different type of operation, viz., regular route operation. In the instant case, Styer, on the critical date, performed a regular route service and continued to do so at all times. He believed and attempted to persuade the Commission that, apart from his regular routes, his eastbound service between territories in Minnesota and South Dakota was such that it also entitled him to an irregular route authority. This was denied him.

The Statute Empowers the Commission to Authorize Service to Intermediate Minnesota Points.

Because of ample evidence of bona fide operations sufficient to sustain the Commission, we are not compelled to wholly rely upon the argument to follow. It has, however, a sound basis in the plain language of the statute, and standing alone, if need be, could be determinative of the case.

The proposition is: Even if the evidence of bona fide operation were wholly absent, the Commission is empowered by Section 308 (a) to require Styer to serve these intermediate Minnesota points. Such is the holding of a three judge statutory court in the Oregon District. *McCracken vs. U. S.*, 47 Fed. Supp. 444 (D. C. Ore.). The lower Court in the instant case rejected this contention holding that Section 208 (a) (U. S. C. 49, 308 (a)) did not confer such power in a "grandfather" case. It held, however, that in the "Public

Convenience and Necessity" case the Commission, without doubt, possessed such powers. In this section of our brief, we discuss the "grandfather" case only.

Section 208 (a) (49 U. S. C. 308 (a)) provides:

"Any certificate issued under *section 206 or 207* shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate; and there shall, *at the time of issuance* and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, *including terms, conditions, and limitations as to the extension of the route or routes of the carrier*, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the Commission under section 204 (a) (1) and (6): Provided, however, That no terms, conditions, or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demands of the public shall require." (Our italics.)

We invite attention first to the opening words of the section. They refer specifically to certificates issued under Section 206—the "grandfather" clause, and, in addition, to certificates issued under Section 207—the "public convenience and necessity" requirements.

Secondly, the quoted section provides that the Commission may attach these conditions at the time of the issuance of the certificates. Such was done here.

It is always difficult to avoid the impact of plain and clear ambiguous language. Taken as a whole, or piece by piece, the language clearly shows that Congress gave the Commis-

sion the power to attach any terms, conditions, or limitations which, in the Commission's judgment, the public convenience and necessity required. The purpose of the section was to make the public interests and necessities paramount at all times. Congress believed the Commission, even after hearing, should have the power to use terms, conditions, and limitations which would meet the then requirements of the public.

It may be argued that the "terms, conditions, and limitations" are words of limitation and that the Commission, therefore, might condition or limit the certificate to be issued to the end only of granting *less* than the evidence might warrant. It was the lower Court's view that "grandfather" rights, being in the nature of a privilege, and to be strictly construed against the applicant, cannot be expanded by the Commission under the power in Section 308 (a).

The argument, however, overlooks a special inclusion in the quoted section, as follows:

"Including terms, conditions, and limitations as to the extension of the route or routes of the carrier."

This inclusion empowers the Commission to compel a carrier to extend his route. It may say to the carrier, "Your regular route terminates at Mitchell, but it happens that there are a dozen small points beyond Mitchell which need your service. You serve them." If he may be compelled to extend a route, with its attendant expense of running trucks through them daily, it must surely be said that the Commission is empowered to compel him to serve a few intermediate points upon his already established route through which his trucks daily run to reach terminal points. The power to compel the greater necessarily includes the power to compel the lesser.

The counterpart of such power as affects railroads may be

found in Part One, Section 1 (21). A hearing is not made compulsory in either section.

Present the power, the wisdom of the matter is for the Commission—not the Courts.

The lower Court quotes the *McDonald* case, *supra*, and *Gregg Cartage & Storage Company vs. U. S.*, 316 U. S. 74, 83. These decisions view the "grandfather" clause as conferring a special privilege and indicating that it should be extended only to carriers plainly within its terms. Something of the same attitude is expressed in *Crescent Express Lines, Inc., vs. U. S.*, 88 L. Ed. Adv. 143, wherein the thought is expressed that Congress did not intend, by the "grandfather" clause, to provide more competition than already existed.

The response is that the Commission has not here granted Styer "grandfather" rights beyond the reasonable limits of proof. It followed a long established and proper rule wherein authority to intermediate route points, although not served on the "grandfather" date, if a part of a route and other intermediate points were served, would be granted, as a part of the full route authority, *intermediate point* if the evidence showed that the carrier had held himself out to serve all intermediate points and was able to do so. The application of that principle does not amount to an unwarranted expansion of the "grandfather" clause.

The Commission had the power, under Section 208 (a) (49 U. S. C. 308 (a)) to authorize the service to these intermediate Minnesota points even if proof of bona fide operations had been absent. It used it wisely.

McCracken vs. U. S., *supra*, supports the position announced above. We note that appellants declare it to be erroneous but do not attack the decision itself. The facts of the two cases are comparable. The lower Court in that case squarely held that Section 308 (a) empowered the Com-

mission to compel the carrier to serve intermediate route points to which no service had been shown during the "grandfather" period.

Appellants argue that the Oregon District Court overlooked the fact that express power, in different language, was given the Commission in Part One (21) to compel railroads to construct extensions. They claim that such power was not given in Part Two, applicable to motor carriers. We have already pointed out that Section 308 (a), in our opinion, was intended to be the counterpart of Section 1 (21), Part One. Part Two, as we view it, was intended to be a complete act, embodying the lessons learned from a piecemeal railroad regulation over a long period of years. Also we see no reason why Congress should deal differently with motor carriers than with railroads. Both are public utilities, and if the public need requires, both should be compelled to fulfill the public's need.

Appellants also too greatly emphasize their position as "parties" to a "grandfather" case before the Commission. The "grandfather" case essentially concerns the Commission and the applicant. Protestants, appellants here, are not parties to the same proceeding as are adversaries in private litigation over private rights. In such position, they are not entitled, as a matter of law, to object to requirements imposed by the Commission upon another carrier in the public interest. We understand that this subject is to be treated in full by another appellee.

The Stipulation.

Appellants argue that Styer, by himself and through counsel, by stipulation in the "grandfather" case and by amendment in the public convenience and necessity case, withdrew from the Commission the power to make such disposition of the question of such intermediate Minnesota points as it deemed warranted by the evidence or in the public interest. They claim (page 12) that the stipulation and amendment had the effect of withdrawing that issue from the case.

The difficulty with appellants' argument is fundamental. Where a controversy embraces a matter of public interest, public right, or public policy, the law is clear that the Court may disregard stipulations of the parties.

St. Paul vs. Chicago, etc., R. Co., 139 Minn. 322, 166 N. W. 335.

Mills vs. Bd. of Commrs., 35 Idaho 7, 204 Pac. 876.

Lockhard vs. People, 65 Colo. 558, 178 Pac. 565.

In re Dardis' Will, 135 Wis. 457, 115 N. W. 332.

We need only state that a matter before the Interstate Commerce Commission under the Motor Carrier Act is one of public interest. The very essence of the law, apart from regulatory features, is public convenience and necessity. There are, in a real sense, three parties to a proceeding before the Commission, viz.: the applicant, the Commission, and the public. If protestants are parties, there are four. The applicant and the protestants could not stipulate away the power or duty of the Commission to protect the public or to discharge any of its statutory duties. They could not in any way tie its hands in the performance of its statutory functions.

In the public convenience and necessity case, the stipulation took the form of an amendment to the application.

Whatever the form, the principle still applies. If the Commission were bound strictly by the contents of an application or became bound by virtue of amendments thereto, which deleted certain segments of route or certain points, the result would be this: every applicant carrier would apply for the *profitable* points of origin and destination of freight and thus avoid the burden incident to service to smaller localities. We insist that Congress did not intend this result, and the Commission is empowered to avoid it—whether pleasing to operators or not.

Appellants further argue that Section 207 (a), U. S. C. 307 (a), provides that the Commission is empowered to grant the whole or any part of an "application" and deduce therefrom that it is without power to grant authority beyond the application in amended and final form. This view is too legalistic. It emphasizes the literal language of the statute to the exclusion of the context and purpose of the Act as a whole. It disregards Section 308 (a) empowering the Commission to add terms, conditions, and limitations deemed desirable to the public interest.

Appellants contend that the result of the stipulation was to deny them a full and fair hearing, claiming that they were deprived of the opportunity to introduce evidence.

The answers are three:

1. No error is here assigned to the effect that appellants were deprived of a full hearing or deprived of any constitutional rights. Lacking any such assignment, the Court will not consider the plea.

2. The point cannot be raised here because it was not raised before the Commission. Appellants petitioned to the full Commission for a reconsideration of the case upon the record there made. There was no petition for further hearing. The Commission's rules provide that a party may

ask for further hearing after Division decision.⁶

After Division 5's order came down, and if it were apparent to appellants that they had been denied the right to be fully heard on any issue, they should then have requested a further hearing for purpose of introducing any evidence they may have had.

3. The constitutional point was not raised in the lower Court.

The appellants' failure to here assign the point as error, their failure to request a hearing before the Commission when opportunity was provided, and their failure to raise the same before the lower Court, deprives the point of consideration in this Court.

The authority cited by appellants, as we read them, do not hold that the Commission is bound by stipulations in public proceedings. The Commission may receive stipulations. It may consider them, but it is not bound by them. The disposition made by the Commission of the stipulations in this case will not bring about the dire results appellants picture on page 13.

⁶(a) In General. A petition seeking any change in a decision order, or requirement of the Commission should specify whether the prayer is for reconsideration, reargument, rehearing, further hearing, modification of effective date, vacation, suspension, or otherwise.

(b) Rehearing or Further Hearing. When in a petition filed under this rule opportunity is sought to introduce evidence to be adduced must be stated briefly, such evidence must not appear to be cumulative, and explanation must be given why such evidence was not previously adduced.

In the Public Convenience and Necessity Case, the Commission Was Warranted by the Evidence and the Power in the Statute to Grant Authority to Serve the Intermediate Minnesota Points on Route 3.

The Commission, as noted, granted authority to serve intermediate Minnesota points on Routes 1 and 2 under the "grandfather" clause application. Under that application, it denied authority to serve the intermediate Minnesota points on Route 3 (Exhibits 1 and 2, R. 126-A and 90). In the public convenience and necessity case, the Commission granted authority to serve intermediate points on Route 3 and it is this grant of which appellants complain.

Route 3 is the southernmost route from the Twin Cities to Mitchell, South Dakota, and return. The principal intermediate point is Sioux Falls, South Dakota. Because Sioux Falls is South Dakota's largest center, much of the evidence centered about the convenience and necessity for service thereto. The evidence supporting the grant of authority to Sioux Falls, to the intermediate South Dakota points between Sioux Falls and Mitchell, was abundant and is not here attacked (R. 190 to 195), and Exhibits 3 (R. 127, 90), 7 (R. 135, 94), 14 (R. 165, 96), 17 (R. 167, 101), 18 (R. 169, 101), 19 (R. 171, 101), 20 (R. 176, 101), 21 (R. 181). The cited exhibits show extraordinary growth and voluminous tonnage over the three-year period following June 1, 1935, thus indicating the public's need for the service.

The Commission had ample evidence before it concerning the need of service at many of the intermediate points upon the route. The issue with the Commission was whether the remaining intermediate points, located in Minnesota, should be included in the authority or a restriction imposed which would increase "empty miles" to the carrier and deny the public an existent service. It deemed it to be in the

public interest to include all intermediate points.

Appellants emphasize that the "public witnesses" referred to need for Styer's transportation to South Dakota points only. It must be remembered that their businesses are located in the Twin Cities and that the only interstate transportation material in this proceeding was interstate, viz.: Minnesota to South Dakota and return. Movement of goods originating in their plants in the Twin Cities destined to Minnesota points are intrastate in nature and immaterial to the issues. Direct proof of the need for interstate service to these Minnesota points from the east must come from Chicago, Milwaukee, or other eastern centers. Witnesses from such far off points are not easily accessible for hearings of this nature.

Appellants place entirely too much emphasis upon the argument that authorities are to be granted from "point to point" to the exclusion of consideration of a "route." Even though the Commission must name intermediate points in its certificate, the "grandfather" clause, the source of "grandfather" authority, authorizes certificates to those who were in "bona fide operation over the route or routes or within the territory. * * *" No reference is made to points. If the Commission is to follow principles which will ultimately "bring about a national transportation system," as the national transportation policy requires, 49 U. S. C., Section 1 (301 and 901) it should, as it did here, avoid the splitting of routes into many parts—to be served by many carriers.

The lower Court adequately disposed of plaintiff's argument upon this phase of the case (R. 64). Its view accords with the fundamental principle relating to public utilities, viz.: the public interest is paramount, the carrier's interest is secondary.

Appellants Are Guilty of Laches.

In affirming the Commission's order, the lower Court found it unnecessary to consider the pleas of laches asserted by Appellee Styer and Intervener Glendenning. We may urge the point here under authority of *U. S. vs. American Ry. Express* (1924), 265 U. S. 425. This phase of the case will be fully presented by Intervener Glendenning. Our comment, therefore, will be brief.

The pertinent facts are: on April 6, 1942, the Commission denied appellants' petition for reconsideration. No action having been commenced, and in its ordinary course, the Commission issued a certificate on July 11—some three months after the last Commission action. Prior thereto, Styer and Glendenning had negotiations concerning a purchase and sale (R. 76). After the issuance of the certificate to Styer and after Glendenning independently verified its contents, negotiations were commenced in earnest. They resulted in an "Agreement of Lease" (R. 30, 73—Exhibit A to Styer's answer, paragraph one) including an option to purchase (at R. 35, paragraph eight) dated September 22, 1942—over two months after the issuance of the certificate. There followed application by both parties to the Commission for temporary authority in Glendenning to operate Styer's properties and a supplemental lease (Exhibit A1 to Styer's answer, R. 47, 74), the exercise by Glendenning of his option to purchase on October 23, 1942 (R. 49, Exhibit A2, 74), an amendment to Glendenning's application to the Commission for lease approval so as to request approval of the purchase (R. 74, 75) and a hearing before a Commission Examiner on October 31, 1942 (R. 75).

Styer was served with summons in this action on November 2nd or 3rd. He first heard of this action on October 31st (R. 79).

The appellant railroads had three months in which to present this action before the issuance of the certificate (July 11). It was not brought within that period. When the certificate was issued Styer regarded it as final (R. 73).

Equally as important, the appellant rested another 3½ months after the issuance of the certificate (July 11 to October 31) before bringing the action. In the meantime, and on September 22nd, Styer had made a favorable sale and Glendenning had obligated himself to the extent of \$66,000 before either of them had any knowledge that the original rights would be assailed in an action of this kind.

On March 13, 1943, the Commission found the transfer from Styer to Glendenning to be in the public interest and gave most adequate reasons therefor (R. 80 through 88).

The law respecting laches is familiar to the Court. The question is one of fact.⁵

"They all proceed upon the theory that laches is not like limitation, a mere matter of time but principally a question of the inequity of permitting the claim to be enforced—an inequity founded upon some change in the condition or relation of the property or the parties."

Gallihier vs. Cadwell, 145 U. S. 368, 36 L. Ed. 738.

In *Penn Mutual Life Insurance Co. vs. Austin*, 168 U. S. 685, the Court said:

"Where a court of equity finds that the position of the parties has so changed that equitable relief cannot be afforded without doing injustice, or that the intervening rights of third persons may be destroyed or seriously impaired, it will not exhaust its equitable powers in order to save him from the consequences of his own neglect."

Pertinent here is the following:

"The requirement of diligence, and the loss of the right to invoke the arm of a court of equity in case of

⁵*Laursen vs. O'Brien* (C. C. A. 7), 90 Fed. (2d) 792.

laeches, is particularly applicable where the subject matter of the controversy is a public work." *Ibid.*

Appellants' delay has always remained unexplained and unexcused.

During the delay, Styer changed his position so that adverse decision upon the merits of the Commission's order will greatly prejudice him. He expended moneys to build up his Sioux City, Iowa, business (R. 71-72). He endeavored to develop business at the Minnesota points upon the routes granted (R. 72). Thereafter he borrowed \$6,000 from his brother and gave these rights as security. Before doing so, he was advised by counsel and the Commission's regional Minneapolis office that the Commission was "definitely final."

In addition, and while appellants slept upon their rights, Styer perfected a favorable sale to Glendenning receiving Glendenning's promise to pay him \$51,485.57 for his trucks and equipment and \$15,000 for his rights here assailed. The sale preserved to him the rights for which he is promised \$15,000 by Glendenning. Such sum is the sum total of almost eight years of effort.

Both Glendenning and Styer have so changed positions during the unexplained delay that if the rights were now set aside, it would produce the greatest injustice and inequity to each of them. In a most real and genuine sense, there came into the existence during the delay the "intervening rights of third persons." (*Penn Mutual Life Insurance Co. vs. Austin, supra.*) These would be destroyed if the Court should now find the Commission's order unsupported or unlawful. Such would be of most serious consequence both to Glendenning and Styer, and the net result would be injustice, not justice.

CONCLUSION

As urged in our motion to affirm, we continue to insist that the questions raised by appellants are not substantial. They involve the weighing of the evidence by the Commission and the exercise of an administrative discretion pursuant to full and clear statutory power.

There was ample evidence in support of the Commission's disposition of the issues before it. The stipulations of the parties, in so far as material, could not, as a matter of law, tie the hands of the Interstate Commerce Commission.

At all events, the unexplained delay in commencing this action to review the Commission's order, and the events transpiring between the termination of Commission proceedings and the service of summons herein revealing undisputed changes of position by Styer and Glendenning, should bar appellants' right to assert the cause. Any other result would produce injustice.

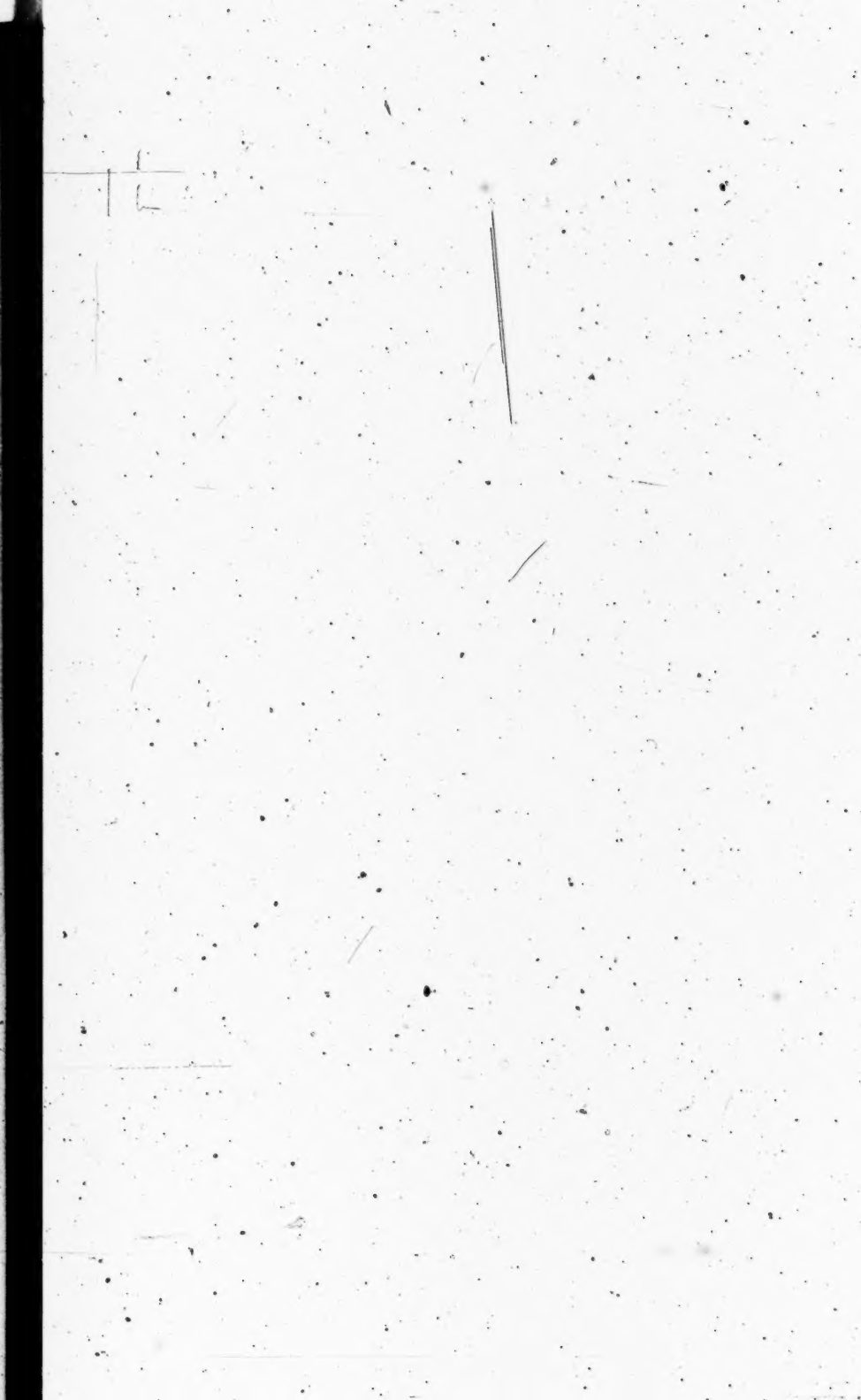
Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 482

**CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA
RAILWAY COMPANY ET AL., APPELLANTS**

v.

**THE UNITED STATES OF AMERICA, INTERSTATE
COMMERCE COMMISSION ET AL.**

**ON APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT OF MINNESOTA**

**BRIEF FOR THE UNITED STATES AND INTERSTATE
COMMERCE COMMISSION**

OPINION

The opinion (R. 56-64) of the specially constituted district court is reported in 50 F. Supp. 249. The report (R. 5-18) of the Interstate Commerce Commission is not officially reported.

JURISDICTION

The final decree of the district court was entered June 12, 1943 (R. 68), and the appellants' petition for appeal (R. 199) was filed August 9,

1943; the appeal was allowed the same day (R. 201). The jurisdiction of this Court was invoked under the Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 210, 219; 28 U. S. C. sec. 47a) and Section 238 of the Judicial Code, as amended by the Act of February 12, 1925 (c. 229, 43 Stat. 936, 938, par. 4; 28 U. S. C. sec. 345); and by Section 205 (h) of Part II of the Interstate Commerce Act (c. 498, 49 Stat. 543; 49 U. S. C. sec. 305 (h)). Probable jurisdiction was noted on December 13, 1943 (R. 211).

QUESTIONS PRESENTED

1. Whether in a "grandfather" clause proceeding the Interstate Commerce Commission may authorize a motor carrier to serve intermediate points on certain routes not actually served on the "grandfather" date, when it was shown that the carrier began operations only two months prior to the "grandfather" date and had held out service to such intermediate points, and that there was a public need for the service.

2. Whether, in a public convenience and necessity proceeding, the Commission may authorize a motor carrier to serve intermediate points on a route when the Commission found that such service was fulfilling a public need and was required by the public convenience and necessity, and it was shown that the carrier had served such intermediate points on the route as shippers had requested.

3. Whether upon finding that a motor carrier engaged in *bona fide* operations on and prior to the "grandfather" date, including service to all intermediate points upon certain routes, and that the public convenience and necessity required the carrier to serve all intermediate points on another route, the Commission may issue a certificate authorizing service to all intermediate points upon the said routes, notwithstanding the fact that in the course of the "grandfather" proceeding the carrier had stated that he did not claim "grandfather" rights to transport goods between points in Minnesota and in the public convenience and necessity proceeding had applied for leave to amend his application so as to withdraw from the scope of said application all service in interstate commerce between points in Minnesota.

STATUTE INVOLVED

The pertinent provisions of the Interstate Commerce Act are set forth in the Appendix, *infra*, pp. ~~36-46~~.

STATEMENT

This is a direct appeal from the final decree (R. 68) of a statutory three-judge district court, dismissing for want of equity a suit filed by several competing railroads, in which they sought to have annulled in part an order of the Interstate Commerce Commission granting to Cornelius W. Styer, doing business as the Northern Transporta-

tion Company and an appellee¹ herein, a certificate of convenience and necessity authorizing operations as a common carrier by motor vehicle under the provisions of Sections 206 (a) and 207 (a) of Part II of the Interstate Commerce Act.

The order resulted from two proceedings arising from applications filed by Styer with the Commission. One was a "grandfather" application under Section 206 (a) of Part II of the Interstate Commerce Act, for authority to operate between Minneapolis and St. Paul, Minnesota (hereinafter called the Twin Cities) and South Dakota points, over several routes (the three which are involved here being designated by the Commission as routes 1, 2, and 3 (R. 16)) and serving all intermediate points. The other was a public convenience and necessity application for a certificate under Section 207 (a) and involved operations over substantially the same routes as those named in the "grandfather" application above referred to, with services to all intermediate points.² (R. 6-7.)

¹ The other appellees are the United States, the Interstate Commerce Commission, and Glendenning Motorways, Inc. Glendenning was the purchaser of Styer's operating rights (R. 80).

² At a hearing in the "grandfather" proceeding before a joint board, as provided for in Section 205, Styer withdrew his application for authority to transport goods in interstate commerce from points in Minnesota to other points in the same State (R. 97). In the Section 207 (a) case, Styer filed

Numerous competitors, including both truck lines and railroads, intervened and opposed the applications, and the Minneapolis Traffic Association and the St. Paul Association of Commerce intervened in support of the applications (R. 8, 14). Separate hearings³ were held upon the applications (R. 6). The joint boards recommended denial of both applications (see R. 6-7). Upon exceptions, the Commission, Division 5, on October 24, 1941, made its report disposing of both proceedings in a single report (R. 5-18).

In an appendix (R. 16-18) to its report, the Commission arranges the numerous operations covered by Styer's applications into 12 routes, eliminating duplications (R. 16). This suit involves only routes 1, 2 and 3,⁴ and only with

with the joint board a written "Motion" in which he asked leave to amend his application by withdrawing from its scope "all service in interstate commerce between points in Minnesota" (R. 195-196). The board conditionally accepted this proposed amendment (R. 190).

³Transcripts of the testimony in the two hearings cover more than 1,400 typewritten pages, with more than 60 exhibits. An abstract thereof has been printed (R. 90-195), and the certified transcript, which was introduced in the district court, has been transmitted to this Court for possible reference.

⁴Route 1 connects the Twin Cities and Mitchell, South Dakota, via Glencoe, Gaylord, New Ulm and Benton, Minnesota, and Arlington, South Dakota. Route 2, approximately parallel to and north of route 1, extends from Winthrop, Minnesota, through Redwood Falls, Marshall and Ivanhoe, Minnesota, to Brookings, South Dakota. Route 3 extends southwesterly from the Twin Cities at Mankato, Minnesota,

respect to service between the Minnesota points thereon. The Commission found that the applicant was entitled to a "grandfather" certificate authorizing operations between the termini of all three routes, with service between all intermediate points on routes 1 and 2. As to route 3, the Commission found that the public need for intermediate service had been shown and that accordingly a certificate of convenience and necessity should issue under Section 207 (a) as to all intermediate points. (R. 15-16.)

Applicant Styer began his trucking operations about April 1935, having for several years previous thereto been employed by a trucking concern located at Huron, South Dakota. Starting with two trucks, he had secured as additional equipment two tractors and two semi-trailer units by the "grandfather" date of June 1, 1935. (R. 9, 90.) In its report, the Commission describes (R. 9) the evidence and reaches the conclusion "that applicant has satisfactorily established operations over routes 1 to 5, inclusive, in the transportation of general commodities" (R. 10).

In a separate paragraph (R. 10-11) of its report, the Commission discussed the service to the thence to Madelia, then to Fairmont and thence through Jackson, Worthington, Adrian and Luverne, Minnesota, into and via Sioux Falls, South Dakota, to Mitchell, South Dakota (R. 16-17, 126 A).

* Appellants do not question the correctness of this finding or complain of the issuance of a "grandfather" certificate based on it.

points between the termini of the routes in question. While Styer in both his original applications had sought authority to serve all intermediate points, he had at the hearing in each proceeding withdrawn his claim for permission to transport interstate shipments between Minnesota points.* As to the intermediate points on routes 1 and 2, the Commission said (R. 10-11):

Prior to June 1, 1935 applicant served the intermediate points on routes 1, 2, 4, and 5 of Brookings, Iroquois, Forestburg, and Madison. Applicant does not claim the right to transport interstate shipments from the Twin Cities to points on his routes in Minnesota, but claims that such points were served eastbound from South Dakota. Although the proof of service at intermediate points on the above routes is not impressive, when considered in connection with the fact that operations by applicant were instituted only 2 months prior to the statutory date and the testimony of applicant that he did not limit his service to terminal points but held out service at all intermediate points and actually solicited such business, we are convinced that he should be authorized to serve all intermediate points on routes 1, 2, 4, and 5, and

* A shipment originating and delivered in Minnesota would of course be in intrastate commerce and not subject to Part II of the Interstate Commerce Act. The Minnesota shipments involved in this proceeding are those originating in or destined for other states and which Styer handles in interchange with some other carrier.

that a restriction to serve certain intermediate points in one direction only would make the authority granted unnecessarily complicated and it will not be imposed.

Having thus explained its reasons for authorizing "grandfather" service to and from all intermediate points on routes 1 and 2, the Commission next took up (R. 11) applicant's right to serve intermediate points on route 3 under the "grandfather" clause of Section 206 (a), and concluded that because no service whatever was shown to have been rendered to any intermediate point on route 3 prior to the "grandfather" date, "we are of the opinion that applicant has failed to establish such bona fide operation to points on this route as would entitle him to rights under the 'grandfather' clause to serve all intermediate points there" (*ibid.*). The Commission then discussed (R. 13-15) Styer's operations instituted subsequent to June 1, 1935, which include service to intermediate points on route 3 and discussed the "evidence tending to show a need for the continuance of such operations or the adequacy of other facilities" (R. 13).

The report enumerates shipments to and from intermediate points on route 3. (See footnote 4, pp. 5-6, *supra*). Most of these shipments, it is true, were to or from South Dakota points but they indicated that the operation as it developed subsequent to the "grandfather" date embraced

service to Minnesota points on this route. Shippers testified as to their need for the service. The Commission decided that such evidence, together with the showing of applicant's long and successful operation, the growth of applicant's business and the increase in the amount of freight moving and the consequent need for increased transportation facilities, was convincing proof that Styer's service in this area was fulfilling a public need. (R. 15.) Accordingly, it refused to "require the discontinuance of his existing service between the Twin Cities and Sioux Falls, Yankton, and intermediate points on route[s] 3 * * * in connection with operations over the routes applicant is found entitled to operate by reason of his 'grandfather' rights" (R. 15).

The Commission made the following pertinent findings (R. 15-16):

We find, in number MC-47644, that on and continuously since June 1, 1935, applicant was and has been in bona fide operation, in interstate or foreign commerce, as a common carrier by motor vehicle of general commodities, except those of unusual value and except dangerous explosives, commodities in bulk, and commodities requiring special equipment, between the points and over routes 1 to 5, inclusive, described in the appendix hereto, serving all intermediate points except those on route 3 and serving South St. Paul, Minn., as an off-route point.

We further find, in No. MC-47644 (Sub-No. 1), that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, of general commodities, with the exceptions specified above, between the points and over routes 6, 10, and 11 and that part of route 9 between Stanley Corners and Yankton, S. Dak., described in the appendix hereto, serving all intermediate points on those routes, except Beresford, S. Dak., and all intermediate points on route 3, also described in the appendix hereto; that applicant is fit, willing and able properly to perform such service and to conform to the provisions of the act and our rules and regulations thereunder.

A suitable certificate (R. 19-21) was issued to Styer on July 11, 1942, in accordance with the Commission's report and order' (R. 18-19).

On September 22, 1942, Styer executed an agreement of lease, with option to sell, to Glendenning Motorways, Inc., a Minnesota corporation, one of the appellees herein (R. 30). Shortly thereafter, the Commission issued temporary authority for the operation of the Styer rights and properties by Glendenning pursuant to the terms of the lease

'Styer had been carrying on the operations involved since 1935. Under the "pendency" provisions of Section 206 (a), such a practice was lawful during the pendency of the application, which was filed February 12, 1936 (R. 7).

(R. 50). On March 13, 1943, the Commission approved the sale under the option contract of Styer's operating rights and equipment to Glendenning (R. 80).

The complaint (R. 1-5) was brought by four railroads operating in the territory traversed by routes 1, 2 and 3. It recites the proceedings before the Commission and prays that the Commission's order be set aside in so far as it authorizes service to and from any point in Minnesota except the Twin Cities, upon the broadly stated grounds that the portions of the order objected to are "erroneous, contrary to law, in excess of the authority of the Commission, and unsupported by evidence" (R. 3-4).

The United States, the Interstate Commerce Commission, and Styer were named as defendants (R. 1); Glendenning intervened in support of the Commission's order (R. 56). The United States and the Commission answered, denying the charges of illegality and alleging that the Commission's action was in accordance with law and fully supported by the evidence (R. 22, 23). Defendants Styer and Glendenning made similar answers with the additional defense of laches (R. 25, 52). On February 23, 1943, the case came on for hearing before a statutory three-judge court at Minneapolis, Minnesota (R. 68), and a certified copy of the Commission's record was introduced in evidence by the plaintiffs (R. 69, 90). Defend-

ants Styer and Glendenning introduced evidence in support of their defense of laches (R. 68).

On June 12, 1943, the court handed down its opinion in which it held that the Commission's certificate was valid and, therefore, that it was not necessary for it to pass upon the issue of laches raised by defendants Styer and Glendenning (R. 56). On the same day, the court made its findings of fact and conclusions of law (R. 65-67) and entered its final decree (R. 68).

SUMMARY OF ARGUMENT

I

It being conceded by appellants that a certificate under the "grandfather" proviso was properly issued to Styer authorizing the transportation of freight between the termini of routes 1, 2, and 3 and to and from some of the intermediate points, the issues in this case involve only Styer's authority to serve the intermediate points in Minnesota. The evidence shows that Styer solicited business for all intermediate points; that it was from the beginning his purpose to render service to all points; that his facilities were sufficient to enable him to do so; and that he had directed his drivers to solicit transportation in either direction in all the towns on the routes through which they passed. The fact that the number of intermediate points actually served was somewhat limited although Styer purported to serve all intermediate

points, is to be accounted for by the fact that upon the "grandfather" date, June 1, 1935, Styer's operations had been continued only about two months. These circumstances warranted the Commission's holding that Styer had served or held himself out to serve the termini and all intermediate points on routes 1 and 2 and hence was entitled to a "grandfather" certificate which included authority to serve all points upon the routes.

The Commission is not required in issuing a "grandfather" certificate (sec. 206 (a)) to make it conform with mathematical exactness to the services actually rendered during the "grandfather" period. It is required only to issue a certificate covering operations having the general characteristics of those carried on by the applicant during the critical period, giving consideration to the applicant's holding out and ability to perform. Styer had been conducting regular route operations between termini with service to and from some intermediate points. The "grandfather" certificate issued under Section 206 (a) is for that type of operation, without confining Styer's future operations to the specific intermediate points previously served.

The Commission properly authorized Styer to serve intermediate points upon route 3 in accordance with his public convenience and necessity ap-

plication under Section 207 (a), for the evidence showed that service to such points was needed.

Section 208 (a) has been held to warrant the Commission's granting an irregular route "grandfather" authority embracing an entire state, although actual service rendered by the applicant during the critical period has been limited to a small portion thereof. *Alton R. Co. v. United States*, 315 U. S. 15. Similarly, in the instant case, the Commission could authorize service to all intermediate points of a regular route operation, although actual service during the critical period was shown to have been rendered to only some of such points.

Sections 206 (a) and 207 (a) are implemented and supplemented by Section 208 (a), as is shown by the legislative history of the latter provision. This legislative history shows that Section 208 (a) was intended to authorize the Commission to specify service to intermediate and off-route points for the purpose of compelling a more complete discharge of a carrier's responsibilities.

Section 208 (a) requires the Commission to consider public convenience and necessity in connection with the issuance of "grandfather" certificates (sec. 206 (a)) and ordinary certificates of convenience and necessity under Section 207 (a). It requires the Commission in issuing either certificate to specify upon the basis of the public

interest the termini and intermediate points of regular route operations (such as involved here), and the territory of operations in the case of irregular routes. Operations authorized under either Section 206 (a) or Section 207 (a) may, even after issuance—"from time to time"—be conditioned and limited in the public interest (sec. 208 (a)). See *McCracken v. United States*, 47 F. Supp. 444 (D. Ore.).

II

Neither Styer's statements made at the hearing in the "grandfather" proceeding to the effect that he did not desire to serve certain intermediate points, nor his motion for leave to limit the scope of his public convenience and necessity application by omitting intermediate points in Minnesota amounted to a stipulation with appellants, the contravention of which would entitle them to a legitimate complaint. Styer's acts are not binding upon the Commission since proceedings before it involve not only the applicant and the protestants but also the public. It is the Commission's duty to see that the interests of the public are conserved. Therefore, the Commission cannot permit such acts of Styer's to prevent or divert it from its duty to issue the kind of certificate that is suitable under Sections 206 (a), 207 (a) and 208 (a).

ARGUMENT

I

THE INCLUSION OF AUTHORITY TO SERVE INTERMEDIATE POINTS IN MINNESOTA IN THE CERTIFICATE FOR OPERATIONS OVER ROUTES 1, 2 AND 3 WAS WARRANTED BY LAW

A. THE CERTIFICATE WAS AUTHORIZED BY SECTIONS 206 (A) AND 207 (A)

The Commission's action with respect to operations over routes 1, 2 and 3 insofar as it authorizes the performance of through transportation between the termini and services to and from the intermediate points along the routes in South Dakota is not questioned in this suit. Appellants object only to authorization of service to and between intermediate points in Minnesota. If successful, their endeavors would result in permitting Styer to serve the terminal points of the routes and intermediate points in South Dakota, but would restrict him from serving similar points in Minnesota. He would be required to follow the wasteful practice of running his trucks empty through Minnesota to and from the Twin Cities except for such freight as he might secure to or from South Dakota points (cf. *United States v. Carolina Freight Carriers Corp.*, 315 U. S. 475, 488), although it is clear that he had no intention of doing this on or prior to June 1, 1935, the "grandfather" date.

The record shows that Styer solicited and was ready to perform service to and from intermediate points in Minnesota. Thus, Styer testified as follows (R. 92-93, 94):

On and prior to June 1, 1935, I solicited business for intermediate points on the regular routes I operated over. * * *

It was my purpose from the beginning to solicit and render service to the intermediate points. * * * We accepted any freight we were able to get from the time we started. We solicited freight for all points along the route. * * * my facilities were such as to permit carrying shipments to the intermediate points not covered by Exhibit 3. [R. 132-133.] There was actual space on my trucks which would have allowed me to accept, carry and deliver shipments to these intermediate points had I received any during the period prior to June 1, 1935. Never at any time did I intend or offer to the public simply a non-stop operation between the Twin Cities and Huren prior to June 1, 1935.

* * * The drivers were instructed to solicit business from all towns on the routes through which they passed, to solicit freight in either direction.

Although this testimony did not show actual service to all intermediate points along the routes prior to the "grandfather" date, it was strong evidence of holding out, solicitation, willingness,

and capacity to serve. The Commission took into consideration the fact that on the "grandfather" date, Styer's enterprise, having been initiated in April 1935, was only two months old. This circumstance explained the limited number of intermediate points actually served, though applicant held out and offered service to all points. And it is clear from a number of decisions by the Commission in "grandfather" cases that the same strictness of proof is not required where service to intermediate points rather than terminal points is involved. In such cases, service may be authorized to particular intermediate points not actually served in the past where, as here, there was actual service to some intermediate points (the South Dakota ones here; see p. 16, *supra*; R. 10) and a genuine holding out * to serve the other intermediate points. See *Nevitt Common Carrier Application*, 4 M. C. C. 298, 300; *Consolidated Freight Lines, Inc., Common Carrier Application*, 11 M. C. C. 131, 136; *Knaus Common Carrier Application*, 20 M. C. C. 669, 671; *Los Angeles-Seattle Motor Express, Inc., Common Carrier Application*, 24 M. C. C. 141, 145; *Tarbet Common Carrier Application*, 31 M. C. C. 63, 66-67.² And where, as here,

* The holding out was deemed crucial in *United States v. Carolina Freight Carriers Corp.*, 315 U. S. 475, 487-488; cf. *Noble v. United States*, 319 U. S. 88, 92.

² Appellants refer (Br. 20) to proceedings before the Commission in *W. D. Gill Common Carrier Application*, 29 M. C. C. 475, and *Denver-Chicago Trucking Company Common Carrier Application*, 27 M. C. C. 343, as authority for

there has been a settled construction of a statute by the administrative authorities entrusted with its application, such construction will not be lightly disturbed by the courts. See, e. g., *Norwegian Nitrogen Co. v. United States*, 288 U. S. 294, 315; *United States v. Chicago North Shore R. Co.*, 288 U. S. 1; *McCaughn v. Hershey Chocolate Co.*, 283 U. S. 488; *Boston & Maine Rd. v. Hooker*, 233 U. S. 97. It has been held that this is especially true of constructions by the Commission of the language of Part II of the Interstate Commerce Act in view of the fact that the Commission proposed it to Congress. *United States v. American Trucking Associations*, 310 U. S. 534, 549.

the statement that the Commission has consistently held that mere operation over a highway is not sufficient to lay a foundation for "grandfather" rights to serve intermediate points which receive no actual service during the "grandfather" period. The Commission's report in the *Denver-Chicago* case indicates that the Commission there found neither service to intermediate points nor a holding out to serve. In the *Gill* case, the Commission did hold that it was not under a legal requirement to include in a "grandfather" certificate authorizing operation between termini service to all points along the routes. However, the Commission cited Section 208 (a) as a direction to it "to determine what intermediate points an applicant under the 'grandfather' clause should be authorized to continue to serve, depending on the facts in the particular case, * * *." The Commission pointed out too that there was no testimony before it indicating service prior to the "grandfather" date to the intermediate points in question "*or that applicant has held himself out to serve any additional points.*" [Italics supplied.] (29 M. C. C. at pp. 476, 477.)

In view of the holding out of operations to the intermediate Minnesota points in question, and the brevity of Styer's operations before the "grandfather" date, the Commission could properly conclude that Styer was on the "grandfather" date in *bona fide* operation with respect to all intermediate points on routes 1 and 2. In its report (R. 11), the Commission said that since it appeared that Styer had not limited his service, but offered service to all intermediate points and actually solicited such business, it was convinced that a restriction as to intermediate points would make the operation unnecessarily complicated. Hence, it found that Styer was entitled to a "grandfather" certificate upon routes 1 and 2, covering all intermediate points.

In its opinion the lower court said (R. 58):

The Commission, in the "grandfather" proceeding, authorized Styer to serve, in both directions, all points located on routes 1 and 2, finding that he was in *bona fide* operation as a common carrier by motor vehicle over those routes, serving all intermediate points, on June 1, 1935, and thereafter. Unless this finding of the Commission is wholly without support in the evidence, it is conclusive upon this court. We cannot concern ourselves with the question of the correctness of the finding, but only with the question of the power of the Commission to make it. The power to decide a question includes jurisdiction to decide it

either correctly or incorrectly. *Pittsburgh Plate Glass Co. v. National Labor Relations Board*, 8 Cir., 113 F. 2d 698, 107. * * *

Answering the appellants' contention that the evidence above referred to was not sufficient to support the Commission's action, the lower court stated in its opinion that the Commission was free to place its own interpretation upon the testimony received by it as to the extent of the service rendered. The court dissented from the suggestion that a "grandfather" certificate could be issued only in the exact pattern of the actual transportation performed, saying (R. 61, 62):

The Commission was not compelled to limit Styer to the exact pattern of his operations prior to June 1, 1935, and, in determining the scope of his "grandfather" rights, it could take into consideration the service which he was offering, as well as that which had actually been performed by him, prior to that date. *United States v. Carolina Freight Carriers Corp.*, supra, pages 483-484. * * *

It must be true, however, that the Commission, in determining the nature and extent of the "grandfather" rights of a carrier in a particular case, is not required to do so with mathematical precision, and that, within reasonable bounds, its estimate of the character and scope of the carrier's bona fide operation on and prior to June 1,

1935, must be accepted by the courts, which cannot substitute their judgment for that of the Commission.

In the public convenience and necessity proceeding, the Commission, acting under Section 207 (a), authorized service to and from intermediate Minnesota points on route 3. This action was fully supported by the evidence outlined (R. 13, 14, 15; see also R. 190, 191) in the Commission's discussion of operations instituted by Styer during the so-called interim period (between June 1 and October 15, 1935; sec. 206 (a)).

B. SECTIONS 206 (A) AND 207 (A) SHOULD BE CONSTRUED IN CONJUNCTION WITH SECTION 208 (A)

The Commission's authority to "round out" the service authorized by a certificate, either under the "grandfather" proviso of Section 206 (a) or under proof of public convenience and necessity as required by Section 207 (a), is to be found in the provisions of Section 208 (a), which reads in part as follows:

Any certificate issued under section 206 or 207 shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate; and there

shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the Commission under section 204 (a) (1) and (6): * * *

It should be noted that the authority of the Commission to specify the service to be rendered and the intermediate points to be served applied to "grandfather" and ordinary certificates under both Sections 206 and 207, and that the certificates are, to the extent stated, to be governed by public convenience and necessity. It is further to be noted that the statement of the National Transportation Policy (Appendix, *infra*, p. 36) includes the regulation of all modes of transportation toward the promotion of safe, adequate, economical and efficient transportation service, and further provides that all the provisions of the Act should be administered and enforced with a view to carrying out the policy so declared. The expert judgment of the Commission in the transportation field clearly warrants its giving consideration to a well-organized transportation service, even in connection

with the issuance of a certificate under the "grandfather" proviso."

In *Alton R. Co. v. United States*, 315 U. S. 15, this Court held that a "grandfather" certificate may be issued for an irregular route service throughout a state when there is no evidence of actual service to many portions of the territory covered by the certificate. The railroad appellants there contended that the Commission was without authority to authorize the applicant to serve a whole state where his services had in fact been limited to only a few points therein. In reply, after referring to the requirement of Section 206 (a) for *bona fide* operations, the Court quoted Section 208 (a) and concluded that "While the test of 'bona fide operation' within a specified 'territory' includes 'actual' rather than potential or simulated service' (*McDonald v. Thompson*,

"Because of the National Transportation Policy, the Commission was empowered to find, as it did, that a "restriction [of "grandfather" rights] to serve certain intermediate points in one direction only would make the authority granted unnecessarily complicated and it will not be imposed" (R. 11). And the legislative history of Section 14 (1) of Part I of the Act (49 U. S. C. 14 (1)), which Section 204 (d) (49 U. S. C. 304 (d)) makes applicable to Part II, makes it plain that the Commission is not required to make formal and precise findings. H. Rep. No. 591, 59th Cong., 1st sess., p. 4; see also *Meeker & Company v. Lehigh Valley R. R.*, 236 U. S. 412, 428; *Manufacturers Ry. Co. v. United States*, 246 U. S. 457, 487; *United States v. Louisiana*, 290 U. S. 70, 80; *United States v. Baltimore & Ohio R. R. Co.*, 293 U. S. 454, 465.

305 U. S. 263, 266), it does not necessarily restrict future operations to the precise points or areas already served. * * * (315 U. S. at p. 21). The Court stated that the Commission may take into consideration the characteristics of the transportation service offered by an applicant in determining the scope of his territory and that this determination "is for the administrative experts, not the courts" (315 U. S. at p. 23).

Thus, in the *Alton* case, the Court recognized that Section 208 (a) is accessory to Section 206 (a) in authorizing the Commission to designate the "territory" within which irregular route operations may be conducted.¹¹ It is submitted that similarly Section 208 (a) must confer power upon the Commission to specify the "intermediate

¹¹ The opinion in *United States v. Carolina Freight Carriers Corp.*, 315 U. S. 475, also recognized the effect of Section 208 (a) upon the Commission's duties under Section 206 (a). The Court said (p. 480):

"Section 208 (a) requires that the certificate specify the routes over which, the fixed termini, if any between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate. * * * Authority to operate within a specified 'territory' may include permission to service all points within that area * * *. The precise delimitation of the area or the specification of localities which may be serviced has been entrusted by Congress to the Commission. *Alton R. Co. v. United States* ante [315 U. S.], p. 15." See also *Crescent Express Lines, Inc. v. United States*, No. 65 this Term, decided December 6, 1943, pamphlet pp. 5, 6; cf. *Noble v. United States*, 319 U. S. 88, 91-92.

points" to be served in a regular route operation such as is involved here. The very words of the Section compel this conclusion.

The legislative history of Section 208 (a) discloses too that it was enacted to play an integral part in the construction and application of Sections 206 (a) and 207 (a). The provision originally appeared as Section 6 of the Rayburn Bill, but applied only to certificates issued under Section 207 (H. R. 6836, 73rd Cong., 2d sess.). The report of the Federal Coordinator of Transportation, S. Doc. No. 152, 73rd Cong., 2d sess., p. 47, makes the following reference to Section 208:

Section 308 [Section 208 of the Motor Carrier Act ¹²] provides for the designation of the routes and termini over or between which a common carrier may operate or the territory which it may serve under its certificate. *There is added to section 6 of the Rayburn Bill a provision which authorizes the Commission to require service to intermediate and off-route points. This addition is intended to enable the Commission to require a more complete discharge of the responsibilities of a common carrier. [Italics supplied.]*

The Coordinator of Transportation, Mr. Eastman, in an unpublished communication of April 3, 1935, addressed to the Senate Committee on Interstate

¹² The Motor Carrier Act was retitled Part II of the Interstate Commerce Act (54 Stat. 899, 919).

Commerce and relative to suggested amendments to S. 1692 (subsequently passed as the Motor Carrier Act, 1935) said (at p. 35):

The words "306 or" in the first line *are added* so that terms, conditions and limitations may be attached to *certificates under the "grandfather" clause as well as to those subsequently issued.* This is only fair. [Italics supplied.]

And Senator Wheeler, Chairman of the Senate Interstate Commerce Committee, in presenting the amended bill said, "Section 208 (a) * * * as amended, permits the Commission to attach to all certificates, whether granted under the grandfather clause or otherwise, reasonable terms, conditions, and limitations. * * *" (79 Cong. Rec. 5654).

From the above, plus the language of Section 208 (a) itself, it is apparent that the sponsors of the bill which subsequently became the Motor Carrier Act understood and construed Section 208 (a) to authorize the Commission to add "service to * * * intermediate * * * points" to the scope of a "grandfather" certificate, upon considerations of the public need. Thus, Section 208 (a) has in a sense, engrafted considerations of public convenience and necessity upon even the dogmatic requirements of Section 206 (a).

In *McCracken v. United States*, 47 F. Supp. 444 (D. Ore.), the effect of Section 208 (a) is discussed in a three-judge statutory court's opinion

dismissing a suit brought by competing carriers to set aside a "grandfather" certificate which granted a carrier authority to serve intermediate points to and from which no actual service had been shown. The plaintiffs contended that the Commission's order was erroneous as to such points because unsupported by any evidence. However, the court pointed out (at p. 446) that although for a time after the enactment of the Motor Carrier Act the Commission construed strictly the rights confirmed by the "grandfather" proviso, "This tendency toward too narrow construction of the rights confirmed to existing carriers has latterly been checked by highest authority [citing the *Carolina Freight Carriers* case]." Section 208, the Court said, was a necessary provision to permit the Commission, while confirming all privileges and rights guaranteed to existing carriers by the statute, to lay the foundation for a consistent transportation system by modifying other operations in accordance with a symmetrical plan of public interest.

The court concluded (p. 447) that—

While the Commission had no power to take away any rights or privileges * * * they could place such terms in the ["grandfather"] certificate as were required by public necessity to make the operations conducted thereunder consistent with operations carried on by others and convenient for the public. * * *

The mere fact that the evidence does not show that Pierce Lines in the past had covered these intermediate points in all possible combinations and permutations did not prevent the Commission from imposing on the carrier the necessity of transporting property between these intermediate points, as well as to and from such points, as a condition to the exercise of the privileges confirmed by the certificate.

We submit that the view taken in the *McCracken* case is eminently sound and justifies the action of the Commission in the case at bar."

¹² Appellants assert (Br. 21), upon the authority of an early decision (*Pan-American Bus Lines Operation*, 1 M. C. C. 190) of the Commission, that the *McCracken* case was erroneously decided. However, the decision referred to has no relevancy here for it did not involve or refer to the Commission's power under Section 208 (a) to require service to intermediate points in certificates authorized by Section 206 (a) or Section 207 (a).

Appellants point out (Br. 22-23) that the convenience and necessity provision affecting the establishment of railroad lines (Section 1 (18) of Part I of the Act) contains a provision (Section 1 (21) of Part I of the Act) specifically giving the Commission power to compel a railroad to provide itself with safe and adequate facilities "and to extend its line or lines". Because the Commission's authority to require motor carrier service to intermediate points is not expressed in exactly similar language, the appellants deny its existence and therefore further assail the *McCracken* decision. Nevertheless, the phraseology of Section 208 (a) is broad enough to include this authority and the legislative history of that Section indicates very clearly that it was the purpose of the Congress to attach to grants of authority for through operation such requirements and conditions relative to the servicing of intermediate points as it believes the public convenience and necessity require. See pp. 26-27, *supra*.

II

THE POWER OF THE COMMISSION TO AUTHORIZE OPERATIONS BETWEEN INTERMEDIATE POINTS ON ROUTES 1, 2, AND 3 WAS NOT VITIATED BY THE APPLICANT'S STATEMENT WITHDRAWING A CLAIM TO "GRANDFATHER" RIGHTS IN SUCH AREA, NOR BY HIS MOTION TO AMEND SIMILARLY HIS PUBLIC CONVENIENCE AND NECESSITY APPLICATION

Styer's original applications prayed authority to serve all intermediate points on all routes (R. 7). At the hearing before a joint board (sec. 205) made up of representatives of the States of Minnesota, North Dakota, and South Dakota, the applicant, through his attorney, stated that he did not seek any "grandfather" rights to transport any goods moving in interstate commerce from any point in Minnesota to another Minnesota point, but that he did claim "grandfather" rights to transport shipments over all regular routes from all regular and irregular route "points in South Dakota to every point in Minnesota (R. 97, 98). The evidence does not disclose the applicant's reasons for thus modifying his original request for authority to serve all intermediate points. In the public convenience and necessity proceeding under Section 207 (a), Styer filed a written motion with the joint board in which he asked leave to amend

¹⁴ The Commission found that what Styer considered to be his irregular operation from South Dakota points to Minnesota had in fact "evolved" into a regular route operation (R. 12).

his application by withdrawing from the scope thereof all service in interstate commerce between points in Minnesota (R. 195, 196). It does not appear that the Commission ever took any action either upon the statement of Styer's counsel at the "grandfather" hearing or upon his motion filed in the public convenience and necessity proceeding.¹⁵ The certificate issued by the Commission authorized service as prayed in the original application, "to and from all intermediate points", which, of course, included intermediate points in Minnesota (R. 21).

Appellants describe the above actions taken by Styer as "stipulations" (Br. 11-12; R. 200, 201). We submit that they are in no sense stipulations, which imply mutual obligations between more than one party. Here, there was no mutual assumption of obligation between Styer and appellants. Styer's actions were in effect mere expressions of his attitude at the time. They amount merely to a request addressed to the Commission that Styer be not required to serve all intermediate points, or merely to a motion for leave to amend his applications, which motion the Commission has never granted. Protestants were not parties to these applications, and while the applicant might have complained of the Commission's failure to permit these amendments if he wished, he

¹⁵ The joint board conditionally accepted the amendment proposed in the motion (R. 190).

did not do so. The situation therefore affords no ground for complaint by appellants. If neither the applicant's "grandfather" operations under Section 206 (a) nor the public convenience and necessity under Section 207 (a) warranted the issuance of the certificate, and the appellants were prejudiced thereby, they would be entitled to complain, but they obviously have no right to object (Br. 29-30) that the Commission did not sustain applicant's motion to amend his application.

It is submitted that it was within the sound discretion of the Commission either to permit or to deny the applicant the privilege of amending his applications. A complainant may not as a matter of right withdraw his complaint. *West v. Atchison, T. & S. F. Ry. Co.*, 190 I. C. C. 401, 403; *Federated Metals Corp. v. Penna. R. R. Co.*, 144 I. C. C. 243. The reason for this rule is that the Commission is obligated to consider and conserve the public interest. *Jewelers' Protective Union v. Penna. R. R. Co.*, 36 I. C. C. 71. And in *Cincinnati, etc. Ry. Co. v. Interstate Commerce Commission*, 206 U. S. 142, 149, the Court said:

* * * We think the Commission in making an investigation on the complaint filed by the Procter & Gamble Company had the power, in the public interest, disembarassed by any supposed admissions contained in the statement of complaint to consider the whole subject and the operation of the new classification in the entire territory, as also

how far its going into effect would be just and reasonable, would create preferences or engender discriminations; in other words, its conformity to the requirements of the act to regulate commerce.

Since the Commission may refuse to permit the dismissal of a complaint if such action would be contrary to the public interest, it may certainly refuse to permit the withdrawal of part of an application for authority to render transportation service to the public, when the withdrawal would result in intermediate points not receiving service. The same considerations which in an earlier portion of this brief (see pp. 15-28, *supra*) are shown to justify the Commission in authorizing service to all intermediate points, although actual service had been shown only to some of them, warranted the Commission's refusal to permit Styer's partial withdrawal of his applications. The Commission, having authorized operations between the termini and to some intermediate points, was empowered, notwithstanding the applicant's attempted withdrawal, to authorize service to all points.

What has been said above with regard to the Commission's refusal to permit amendment of Styer's applications is especially true in connection with Styer's acts if they are to be considered as requests for exemption from the obligation of service to intermediate points. Surely there was no compulsion upon the Commission to omit from

the certificate issued Styer the rendition of service to some intermediate points, while authorizing service to others. The Commission clearly has statutory authority to determine what omission, if any, would be to the public convenience and necessity.

Appellants erroneously contend (Br. 12-13) that the applicant's statements and motion withdrew from the proceeding "the issue" with respect to service between Minnesota points. They rely on a number of rate cases brought upon complaints seeking orders compelling rate changes, perhaps with reparation orders, and under statutes which specifically require hearings. Neither Section 206 (a) nor Section 207 (a) makes any mention of hearings. Appellants say that they were deprived of the hearing to which they were entitled by applicant's action, but they do not point out any "grandfather" or convenience and necessity provision requiring that a hearing be accorded in connection with such matters, even to the applicant.²⁸ Certainly a competitor will not be heard to complain that he was deprived of a hearing in

²⁸ Although the applicant here may have had a right to a hearing under the due process clause (*Morgan v. United States*, 298 U. S. 468), no vested rights of his competitors are in issue (cf. *Stephenson v. Binford*, 287 U. S. 251, 264), and the Constitution does not require that they receive a hearing. Cf. *Singer & Sona v. Union Pacific R. Co.*, 311 U. S. 295.

In *Woodruff v. United States*, 40 F. Supp. 949, 953 (D. Conn.), a three-judge district court held that in an abandon-

such case, especially by something which not the Commission, but the applicant, has done. Furthermore, appellants have never applied to the Commission for a reopening of the proceedings for the purpose of enabling them to offer evidence in opposition to the grant of authority to serve the intermediate points in Minnesota. Their prayer was for reconsideration by the Commission upon the record already made (and no claim was made therein that they were deprived of a hearing). (See R. 3.) Hence, they should not be permitted to assert that they were deprived of a hearing. And, taking the record as a whole, it is difficult to perceive how the protestants could have made a more comprehensive defense than they did.

It is asserted (Br. 17) that Styer's statement that he did not desire to serve intermediate Minnesota points prevents the Commission from considering his preceding testimony that he did not limit his service to terminal points but instead held out and offered to serve all intermediate points. We submit that the Commission in the performance of its public duty may give consid-

ment case (sec. 1 (18) of Part I of the Act) the Commission is not required to grant any hearing to private parties. The court held that under the terms of Section 1 (19), in connection with Section 20a (6), the Commission is required to grant a hearing in abandonment proceedings only to the state authorities and the railroad. Cf. *Chicago Junction Case*, 264 U. S. 258, 265, note 10.

¹⁷ Copies of appellants' petitions to the Commission for reconsideration have been lodged with the Clerk of this Court.

eration to such evidence as it considers credible, and that it may act upon such evidence in the public interest. The portions of appellants' brief devoted to the contention that the Commission's findings are erroneous (Br. 17-20, '26-28) raise only the issue of the weight of the evidence. Admittedly, the evidence in the proceedings was conflicting, but every factual statement in the Commission's report is, we submit, supported by substantial evidence. Therefore, under long-standing decisions of this Court, the lower court was right in declining to consider the conflicting evidence and weigh the same. See, *e. g.*, *Wilmington Trust Co. v. Helvering*, 316 U. S. 164, 168; *National Labor Relations Board v. Nevada Consolidated Copper Corp.*, 316 U. S. 105, 106, 107.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decree of the district court should be affirmed.

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MARCH 1944.

APPENDIX

The Interstate Commerce Act, as amended by the Act of September 18, 1940, 54 Stat. 899, sets forth the National Transportation Policy as follows:

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy. (49 U. S. C. 1.)

**Part II of the Interstate Commerce Act,
August 9, 1935, c. 498, 49 Stat. 543, as amended.
Section 204 (a) provides, in part:**

It shall be the duty of the Commission—

(1) To regulate common carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(6) To administer, execute, and enforce all provisions of this part, to make all necessary orders in connection therewith, and to prescribe rules, regulations, and procedure for such administration. (49 U. S. C. 304 (a).)

Section 206 (a) provides, in part:

Except as otherwise provided in this section and in section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: *Provided, however,* That, subject to section 210, if any such carrier or predecessor in interest was in bona fide opera-

tion as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation and has so operated since that time, except in either instances as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after this section shall take effect, and if such carrier was registered on June 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered in connection with the issuance of such certificate. Otherwise the application for such certificate shall be decided in accordance with the procedure provided for in section 207 (a) of this part and such certificate shall be issued or denied accordingly. Pending the determination of any such application the continuance of such operation shall be lawful: * * * (49 U. S. C. 306 (a).)

Section 207 (a) provides:

Subject to section 210, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of

the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: *Provided, however,* That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and between fixed termini, except as such carriers may be authorized to engage in special or charter operations. (49 U. S. C. 307 (a).)

Section 208 (a) provides:

Any certificate issued under section 206 or 207 shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate; and there shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier,

the requirements established by the Commission under section 204 (a) (1) and (6): *Provided, however,* That no terms, conditions, or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demands of the public shall require. (49 U. S. C. 308 (a).)

SUPREME COURT OF THE UNITED STATES.

No. 482. — OCTOBER TERM, 1943.

Chicago, Saint Paul, Minneapolis &
Omaha Railway Company, et al.,
Appellants,

vs.

The United States of America, Inter-
state Commerce Commission, et al.]

On Appeal from the
District Court of the
United States for the
District of Minnesota.

[April 10, 1944.]

Mr. Justice JACKSON delivered the opinion of the Court.

Appellants are five railroads operating in Minnesota and North Dakota. They claim to be aggrieved by an order of the Interstate Commerce Commission granting operating authority to a motor carrier of goods in that territory. Appellee Cornelius Styer, doing business as Northern Transportation Company, made application for two classes of common-carrier rights. As to certain routes he sought "grandfather rights" under Section 206(a) of Part II of the Interstate Commerce Act, 49 U. S. C. § 306(a). As to certain others, he sought authority under sections 206(a) and 207(a) of the Act, 49 U. S. C. § 306(a), 307(a), by showing that the proposed service "is or will be required by the present or future public convenience and necessity." After due hearings both classes of rights were granted. Styer later transferred them to the appellee Glendenning Motorways, Inc.

The railroads brought an action in the District Court for Minnesota against the Commission and the carriers to annul the Commission's certificate, pursuant to 28 U. S. C. § 41(28). The cause came on before a court of three judges who dismissed the complaint on the merits. It was brought here by direct appeal.

It is contended that there is no evidence to support the findings on which the Commission granted operating rights. The court below examined the evidence as to each challenged finding and found each "not unsupported by evidence." It declined, quite properly, to substitute inferences of its own for those drawn by the Commission from testimony and declined to weigh anew conflicts in it. This was no error, and we affirm the findings. *Gregg*.

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2 Chi., St. P., M. & O. Ry. Co. et al. vs. United States et al.

Cartage and Storage Co. v. United States, 316 U. S. 74; *Rochester Telephone Corp. v. United States*, 307 U. S. 125.

The question of law in the case is whether the Commission on its finding need for such service had power to authorize service of intermediate points not asked for by the applicant. The applicant has accepted and is defending the grant, but the competing rail carriers complain of it.

In the grandfather case Styer stated that he did not claim and was not applying for authority to carry goods in interstate commerce from any Minnesota point to any Minnesota point. But he had begun operations only two months prior to the "grandfather" date. The Commission found that he had held out service to such intermediate points and that there was public need for it.

In the convenience and necessity case, before hearing Styer filed an amendment to his application which withdrew request for authority as to "all service in interstate commerce between points in Minnesota." The Commission, however, found that he had served such intermediate points on the route as shippers had requested it, that such service was fulfilling a public need, and was required by the public convenience and necessity.

It is said that these actions withdrew the intermediate points from issue and threw the protesting parties off their guard and that they did not have opportunity for adequate hearing on the matters ultimately decided. However, after receiving the report of Division 5 recommending granting, as was done, the railroads filed a petition for reconsideration. It is not in evidence. Whether surprise was claimed and evidence was indicated that could be added on rehearing, we do not know. The Court endeavors to protect the right of parties to fair hearings, but it will not presume that their rights have been substantially denied when they do not embrace the opportunity to prove their grievance in the court below.

It is clear that the Commission on the facts found had power to include in the authorization provision for service greater than the carrier had asked. Section 208(a) of the Act provides that in any certificate issued under either Section 206 or Section 207 "there shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier." 49 U. S. C. § 308(a).

Judgment affirmed.